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October 22, 2009

Item No. 11
Doc. No. 6

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Senior Staff Counsel
Regional Water Quality Control Board, San Diego Region
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San Diego, CA 92123
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David Boyers, Esq.
Senior Staff Counsel
State Water Resources Control Board
Office of Enforcement
1001 "I" Street, 16th Floor
Sacramento, CA 95814
DBoyers@waterboards.ca.gov

Subject: ACL Complaint No. R9-2009-0042
Evidence and Policy Statements

Dear Ms. Hagan and Mr. Boyers:

Pursuant to the Hearing Procedure for Administrative Civil Liability Complaint No. R9-2009-0042, the City of San Diego submits the following information:

I. Evidence

The following documents are enclosed with this letter:

1. Declaration of Ann Sasaki, Assistant Director of the City's Public Utilities Department.
2. Declaration of Jean Fernandes, Senior Water Utility Supervisor with the City's Public Utilities Department.
3. City of San Diego sanitary sewer overflow ("SSO") statistics from 2000-2009.
4. SSO statistics for agencies in San Diego County from 2000 to present.
5. SSO statistics for agencies in San Diego County from August 24, 2007 to present.

6. ACL Order No. R1-2007-0021 City of Eureka.
7. ACL Order No. R1-2008-0004 City of Sebastopol.
8. ACL Order No. R2-2009-0026 Sewerage Agency of Southern Marin.
9. ACL Complaint No. R8-2004-0114 City of Corona.
10. ACL Complaint No. R8-2008-0054 Orange County Sanitation District.
11. ACL Order No. R9-2001-174 City of San Diego.
12. ACL Order No. R9-2008-0020 Fallbrook Public Utility District.
13. ACL Order No. R9-2008-0072 Cities of Vista and Carlsbad.
14. ACL Order No. R9-2008-0159 Santa Margarita Water District.
15. ACL Complaint No. R9-2009-0040 City of Laguna Beach.
16. Proposed Order No. WQ-2009-00XX-EXEC City of Stockton.
17. Order No. R9-2007-0005 Region 9 Waste Discharge Requirements.
18. Order No. 2006-0003-DWQ State General Waste Discharge Requirements.
19. Final Consent Decree entered in *U.S.A. v. City of San Diego and San Diego Baykeeper, et al. v. City of San Diego*.
20. Mayor Jerry Sanders Fact Sheet regarding City of San Diego budget deficit.
21. City of San Diego Five-Year Financial Outlook dated October 1, 2009.

II. Legal and Technical Arguments or Analysis

This information has been provided by the City to all designated parties by letter to Michael McCann dated November 26, 2007, and by letter to Leo Sarmiento dated October 6, 2008. Both letters are included as attachments to ACL Complaint No. R9-2009-0042 and identified as evidence by Mr. Boyers' Evidence and Policy Statements.

The additional evidence set forth above is presented to show the cause of the SSO and the City's level of culpability, demonstrate the City's continuing efforts to reduce SSOs, compare the recommended civil liability to that imposed on other agencies, and describe the current state of City finances.

III. Witnesses

The City may call upon the following witnesses if necessary:

| Name | Subject | Estimated Time | Qualifications |
|----------------|---|----------------|---|
| Jim Barrett | Operation, maintenance and repair of sewer system | 5 minutes | Director of Public Utilities Department |
| Ann Sasaki | Operation, maintenance and repair of sewer system | 5 minutes | Assistant Director of Public Utilities Department |
| Steve Meyer | Water quality impacts | 5 minutes | Deputy Director, Environmental Monitoring & Technical Services Laboratory |
| Jean Fernandes | Operation, maintenance and repair of sewer system; present at SSO | 10 minutes | Senior Water Utility Supervisor |

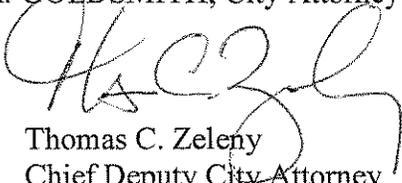
I also intend on presenting and discussing the evidence set forth above, estimated to take no longer than 15 minutes.

If you have any questions regarding this submittal, please contact me at 619.533.5800.

Sincerely,

JAN I. GOLDSMITH, City Attorney

By


Thomas C. Zeleny
Chief Deputy City Attorney

1 JAN I. GOLDSMITH, City Attorney
MARY JO LANZAFAME, Assistant City Attorney
2 THOMAS C. ZELENY, Chief Deputy City Attorney
California State Bar No. 176280
3 Office of the City Attorney
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5 Facsimile: (619) 533-5856

6 Attorneys for
THE CITY OF SAN DIEGO
7

8 **CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD**

9 **SAN DIEGO REGION**

10 IN THE MATTER OF:) COMPLAINT NO. R9-2009-0042
11 CITY OF SAN DIEGO)
SANITARY SEWER SYSTEM) FOR
12 SAN DIEGO COUNTY) ADMINISTRATIVE CIVIL LIABILITY
13)
14)
15)

16 **DECLARATION OF ANN SASAKI**

17
18 I, Ann Sasaki, declare as follows:

- 19 1. The following facts are within my personal knowledge, and if called upon to
20 testify, I could and would competently testify thereto.
- 21 2. I am an Assistant Director of the Public Utilities Department of the City of San
22 Diego. My responsibilities include overseeing the operation, maintenance and repair of the
23 City's wastewater collection and treatment system.
- 24 3. Between January 1, 2002 and June 30, 2007, the City of San Diego repaired or
25 replaced 200 miles of sewer pipe in order to reduce sanitary sewer overflows ("SSOs") as a
26 condition of an administrative order and two partial consent decrees in litigation brought against
27 the City of San Diego by the United States Environmental Protection Agency, the San Diego
28 Regional Water Quality Control Board, and local environmental groups over past SSOs.

1 4. In March 2005, the City settled the litigation with the San Diego Regional Water
2 Quality Control Board over past SSOs for \$1.2 million.

3 5. On October 12, 2007, a final consent decree was entered resolving all remaining
4 issues in the litigation over past SSOs with the United States Environmental Protection Agency
5 and local environmental groups.

6 6. The requirements of the final consent decree include repairing or replacing 250
7 miles of sewer pipe and upgrading 27 sewer pump stations, all by June 30, 2013 at the estimated
8 cost of \$117 million per year.

9 7. The requirements of the final consent decree include securing approximately
10 5,800 sewer manholes against vandalism, cleaning at least 1,500 miles of sewer pipe each year
11 through June 30, 2013, and ensuring every sewer pipe in the City's municipal system is cleaned
12 at least once every five years, at the estimated cost of \$48.7 million per year.

13 8. In the final consent decree, the United States Environmental Protection Agency
14 agrees not to assess fines or penalties against the City of San Diego for SSOs if the City is in
15 compliance with the terms of the final consent decree.

16 9. The City is in compliance with the final consent decree.

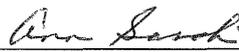
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18 I declare under penalty of perjury of the laws of the State of California that the foregoing
19 is true and correct.

20 Executed this 22 day of October 2009, at San Diego, California.

21

22



ANN SASAKI

23

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28

1 JAN I. GOLDSMITH, City Attorney
2 MARY JO LANZAFAME, Assistant City Attorney
3 THOMAS C. ZELENY, Chief Deputy City Attorney
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10 Attorneys for
11 THE CITY OF SAN DIEGO

12 **CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD**
13 **SAN DIEGO REGION**

14 IN THE MATTER OF:) COMPLAINT NO. R9-2009-0042
15 CITY OF SAN DIEGO)
16 SANITARY SEWER SYSTEM) FOR
17 SAN DIEGO COUNTY) ADMINISTRATIVE CIVIL LIABILITY
18)
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29 **DECLARATION OF JEAN FERNANDES**

30 I, Jean Fernandes, declare as follows:

31 1. The following facts are within my personal knowledge, and if called upon to
32 testify, I could and would competently testify thereto.

33 2. I am a Senior Water Utility Supervisor with the Public Utilities Department of the
34 City of San Diego. My responsibilities include responding to sanitary sewer overflows ("SSOs")
35 from the City's wastewater collection system.

36 3. On August 24, 2007, I responded to a SSO near Escala Drive in Rancho
37 Bernardo, which is the subject of this complaint for administrative civil liability.

38 4. The SSO was caused by a mop head, rags, and grease which blocked the flow in
an 8-inch sewer main. A photograph of the obstruction is attached hereto as Exhibit A.

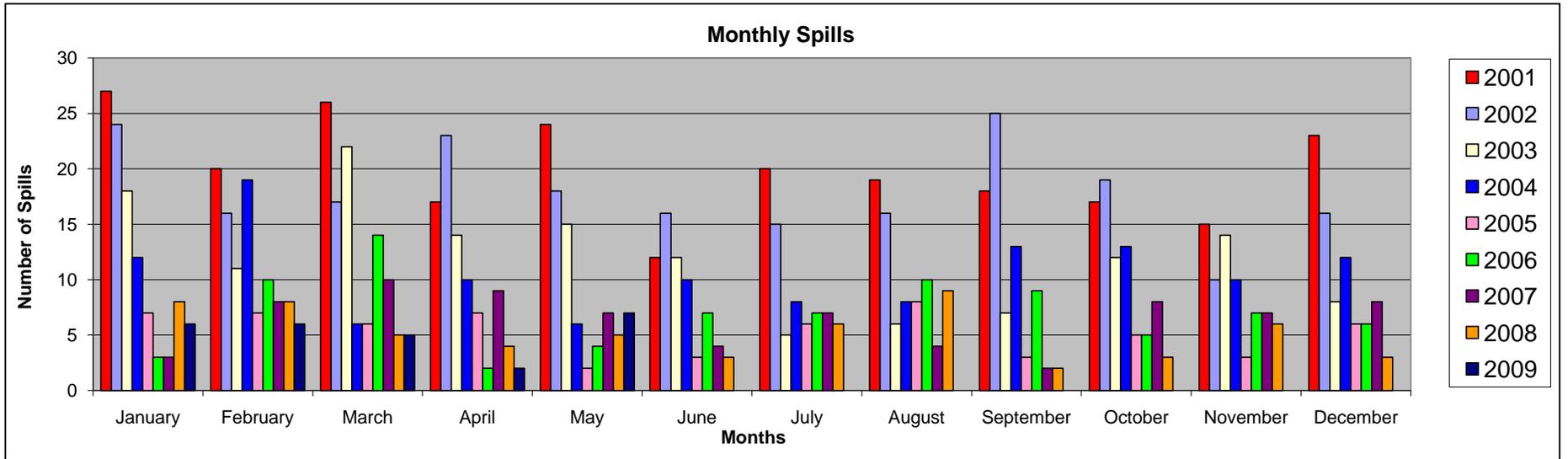
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EXHIBIT A
(to declaration of Jean Fernandes)



MWWD Sewer Spills from 2000-2009

| MONTH | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 |
|----------------------------|------------|------------|------------|------------|------------|-----------|-----------|-----------|-----------|-----------|
| January | 45 | 27 | 24 | 18 | 12 | 7 | 3 | 3 | 8 | 6 |
| February | 25 | 20 | 16 | 11 | 19 | 7 | 10 | 8 | 8 | 6 |
| March | 23 | 26 | 17 | 22 | 6 | 6 | 14 | 10 | 5 | 5 |
| April | 32 | 17 | 23 | 14 | 10 | 7 | 2 | 9 | 4 | 2 |
| May | 33 | 24 | 18 | 15 | 6 | 2 | 4 | 7 | 5 | 7 |
| June | 17 | 12 | 16 | 12 | 10 | 3 | 7 | 4 | 3 | |
| July | 31 | 20 | 15 | 5 | 8 | 6 | 7 | 7 | 6 | |
| August | 39 | 19 | 16 | 6 | 8 | 8 | 10 | 4 | 9 | |
| September | 36 | 18 | 25 | 7 | 13 | 3 | 9 | 2 | 2 | |
| October | 25 | 17 | 19 | 12 | 13 | 5 | 5 | 8 | 3 | |
| November | 26 | 15 | 10 | 14 | 10 | 3 | 7 | 7 | 6 | |
| December | 33 | 23 | 16 | 8 | 12 | 6 | 6 | 8 | 3 | |
| Totals YTD | 365 | 238 | 215 | 144 | 127 | 63 | 84 | 77 | 62 | 26 |
| Public Water Spills | 33 | 35 | 24 | 16 | 9 | 9 | 10 | 8 | 9 | 3 |





California Integrated Water Quality System Project (CIWQS)

Spill Public Report – Summary Page

Here is the summary page with the results of your spill public report search. These results correspond to the following search criteria:

SEARCH CRITERIA: [\[REFINE SEARCH\]](#)

- County (San Diego)
- Region (9)
- Spill Type (aso_cat1)
- Start Date (01/01/2000)
- End Date (11/01/2009)

Please see the [glossary of terms](#) for explanations of the search results column headings. [More information about the report is found at the bottom of this page.](#)

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[\[EXPORT THIS REPORT TO EXCEL\]](#)

[\[EXPORT ALL SPILL DETAILS TO EXCEL\]](#)

| Region | Responsible Agency | Collection System | Total Number of SSO locations | Total Vol of SSOs (gal) | Total Vol Recover (gal) | Total Vol Reach Surface Water | Percent Recover | Percent Reach Surface Water | Miles Pressure Sewer | Miles Gravity Sewer | Miles of Laterals | Total Number of SSO locations per 100 miles of Sewer | Tot Vol of SSOs Reach Surface Water per 100 miles of Sewer | WDID |
|--------|---|------------------------------------|-------------------------------|-------------------------|-------------------------|-------------------------------|-----------------|-----------------------------|----------------------|---------------------|-------------------|--|--|-----------|
| 9 | AC/S Environmental Security, MCB Camp Pendleton | Usmc Base, Camp Pendleton CS | 24 | 528,021 | 45,091 | 394,556 | 8 | 74 | 32.0 | 104.0 | 80.0 | 11.1 | 182,664.8 | 9SSO10710 |
| 9 | BUENA SANITATION DISTRICT | Buena CS | 2 | 87,200 | 35,800 | 51,400 | 41 | 58 | 8.0 | 98.5 | 0.0 | 1.8 | 48,262.9 | 9SSO10700 |
| 9 | CARLSBAD MWD | Carlsbad MWD CS | 15 | 7,346,795 | 5,896,320 | 7,329,475 | 80 | 99 | 4.8 | 282.0 | 1.0 | 5.2 | 2,546,725.1 | 9SSO11209 |
| 9 | CORONADO CITY | City Of Coronado CS | 2 | 18,000 | 15,000 | 3,000 | 83 | 16 | 6.6 | 39.3 | 1.0 | 4.2 | 6,396.5 | 9SSO10647 |
| 9 | CSU San Diego | San Diego State University CS | 1 | 960 | 0 | 960 | 0 | 100 | 0.0 | 5.0 | 4.0 | 11.1 | 10,666.6 | 9SSO10692 |
| 9 | Chula Vista City | City Of Chula Vista CS | 4 | 8,388 | 5,700 | 2,538 | 67 | 30 | 2.6 | 478.0 | 0.0 | 0.8 | 528.0 | 9SSO10646 |
| 9 | Del Mar City | City Of Del Mar CS | 3 | 3,303 | 2,625 | 678 | 79 | 20 | 1.8 | 29.0 | 0.0 | 9.7 | 2,201.2 | 9SSO10648 |
| 9 | EL CAJON CITY OF | City Of El Cajon CS | 1 | 150 | 100 | 50 | 66 | 33 | 0.0 | 195.0 | 0.0 | 0.5 | 25.6 | 9SSO10649 |
| 9 | Encinitas City | City Of Encinitas CS | 1 | 330 | 100 | 230 | 30 | 69 | 4.0 | 120.0 | 0.0 | 0.8 | 185.4 | 9SSO10650 |
| 9 | Escondido City | Hart Disch To San Elijo Oo CS | 7 | 23,869 | 3,094 | 20,775 | 12 | 87 | 10.7 | 365.0 | 0.0 | 1.8 | 5,529.6 | 9SSO10668 |
| 9 | Fallbrook Public Utility Dist | Fallbrook Plant 1, Oceanside of CS | 9 | 158,319 | 825 | 157,494 | 0 | 99 | 4.6 | 76.6 | 0.0 | 11.0 | 193,958.1 | 9SSO10667 |
| 9 | IMPERIAL BEACH CITY OF | City Of Imperial Beach CS | 2 | 905 | 150 | 755 | 16 | 83 | 6.0 | 32.0 | 0.2 | 5.2 | 1,976.4 | 9SSO10651 |
| 9 | LEMON GROVE CITY OF | City Of Lemon Grove CS | 2 | 1,520 | 500 | 1,020 | 32 | 67 | 0.1 | 62.4 | 0.0 | 3.2 | 1,632.0 | 9SSO10654 |
| 9 | La Mesa City | City Of La Mesa CS | 3 | 1,585 | 550 | 735 | 34 | 46 | 0.0 | 155.0 | 0.0 | 1.9 | 474.1 | 9SSO10652 |
| 9 | Leucadia Wastewater District | Leucadia Wastewater District CS | 3 | 3,150 | 300 | 2,850 | 9 | 90 | 11.4 | 191.0 | 0.0 | 1.4 | 1,408.1 | 9SSO11210 |
| | NATIONAL | City Of | | | | | | | | | | | | |

| | | | | | | | | | | | | | | | |
|---|------------------------------------|--|-----|---------|------------|-----------|-----------|-----|-------|---------|---------|---------|----------|-----------|--|
| 9 | CITY, CITY OF OLIVENHAIN MWD | National City CS 4-S Ranch CS | 2 | 21,750 | 9,000 | 12,750 | 41 | 58 | 1.0 | 96.9 | 10.0 | 1.8 | 11,816.4 | 9SSO10655 | |
| 9 | | La Salina WWTP, Oceanside Off CS | 1 | 720 | 100 | 620 | 13 | 86 | 5.5 | 30.0 | 0.0 | 2.8 | 1,746.4 | 9SSO10644 | |
| 9 | Otay MWD | Otay Water District CS | 23 | 217,458 | 190,990 | 26,332 | 87 | 12 | 39.0 | 450.0 | 0.0 | 4.7 | 5,384.8 | 9SSO10674 | |
| 9 | Padre Dam Municipal Water District | Padre Dam City Of Poway CS | 1 | 100 | 0 | 100 | 0 | 100 | 1.7 | 79.9 | 0.0 | 1.2 | 122.5 | 9SSO10679 | |
| 9 | Poway City | Rainbow Municipal Water Dist CS | 3 | 34,625 | 6,000 | 28,125 | 17 | 81 | 5.0 | 161.0 | 0.0 | 1.8 | 16,942.7 | 9SSO10680 | |
| 9 | | San Vicente Treatment Plant CS | 2 | 13,650 | 3,600 | 13,650 | 26 | 100 | 10.0 | 178.0 | 34.0 | 0.9 | 6,148.6 | 9SSO10656 | |
| 9 | RAINBOW MWD | San Vicente Treatment Plant CS | 2 | 770,200 | 0 | 14,200 | 0 | 1 | 4.0 | 52.0 | 0.0 | 3.5 | 25,357.1 | 9SSO10687 | |
| 9 | Ramona MWD | SOLANA BEACH, CITY OF San Diego City | 2 | 48,746 | 0 | 48,746 | 0 | 100 | 1.0 | 40.0 | 21.0 | 3.2 | 78,622.5 | 9SSO10695 | |
| 9 | | San Diego County | 7 | 48,680 | 38,910 | 9,020 | 79 | 18 | 2.0 | 39.0 | 0.1 | 17.0 | 21,946.4 | 9SSO11172 | |
| 9 | San Diego City | San Diego County Of San Diego CS | 118 | 835,973 | 239,228 | 586,587 | 28 | 70 | 139.0 | 2,991.0 | 2,000.0 | 2.3 | 11,434.4 | 9SSO10658 | |
| 9 | San Diego County | Julian Water Pollution Facil. CS | 10 | 12,085 | 100 | 5,980 | 0 | 49 | 4.0 | 371.0 | 0.0 | 2.6 | 1,594.6 | 9SSO10662 | |
| 9 | San Diego County | University Of California, San Diego CS | 1 | 850 | 300 | 550 | 35 | 64 | 0.4 | 3.0 | 0.0 | 29.4 | 16,176.4 | 9SSO10673 | |
| 9 | UC San Diego | US Marine Corps Recruit Depot | 4 | 6,300 | 0 | 3,300 | 0 | 52 | 2.0 | 25.0 | 3.0 | 13.3 | 11,000.0 | 9SSO10709 | |
| 9 | | MCRD CS | 1 | 11,654 | 0 | 0 | 0 | 0 | 0.0 | 4.0 | 2.5 | 15.3 | 0.0 | 9SSO11384 | |
| 9 | VALLEY CENTER MWD | Lower Moosa Canyon Recl Facil CS | 2 | 290 | 180 | 35 | 62 | 12 | 5.0 | 50.0 | 7.0 | 3.2 | 56.4 | 9SSO10675 | |
| 9 | Vista City | City Of Vista CS | 7 | 421,345 | 336,472 | 33,373 | 79 | 7 | 0.2 | 229.1 | 0.0 | 3.0 | 14,554.2 | 9SSO10660 | |
| | | | | 265 | 10,626,921 | 6,831,035 | 8,749,884 | | | | 312.3 | 7,032.7 | 2,163.8 | | |

Each individual SSO report contains the data related to one specific location where sewage discharged from the sanitary sewer system due to a failure (e.g., sewer pipe blockage or pump failure). A single failure within a sanitary sewer system can result in multiple sewage discharge locations and, thus, multiple SSO reports. For example, a lift station power failure can result in sewage being discharged from numerous manholes. In this example, a SSO report would be submitted for each manhole that discharged sewage with all reports sharing the same failure or cause data.

It is important to review SSO reports in detail to determine if individual sewage discharge locations share a common underlying failure or cause when assessing the performance of Enrollees and their sanitary sewer systems through SSO events. This is because it is the failures that are the ultimate problem which the Enrollees should be making all reasonable efforts to prevent.

The search results below present summary data for all sewage discharge locations, as submitted through individual SSO reports, which meet the search criteria selected. To determine if SSO reports relate to a common failure within the sanitary sewer system, the SSO reports should be reviewed in detail by selecting the specific "agency" or "collection sys" name from the table below.

The "agency", or Enrollee, listed on a SSO report is responsible for the sewage discharge described and should be contacted directly for questions related to that incident.

The current report was generated with real-time data entered by Enrollees.

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California Integrated Water Quality System Project (CIWQS)

Spill Public Report – Summary Page

Here is the summary page with the results of your spill public report search. These results correspond to the following search criteria:

SEARCH CRITERIA: [\[REFINE SEARCH\]](#)

- County (San Diego)
- Region (9)
- Spill Type (ssc_cat1)
- Start Date (08/24/2007)
- End Date (11/01/2009)

Please see the [glossary of terms](#) for explanations of the search results column headings. [More information about the report is found at the bottom of this page.](#)

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[\[EXPORT ALL SPILL DETAILS TO EXCEL\]](#)

| Region | Responsible Agency | Collection System | Total Number of SSO locations | Total Vol of SSOs (gal) | Total Vol Recover (gal) | Total Vol Reach Surface Water | Percent Recover | Percent Reach Water | Miles Pressure Sewer | Miles Gravity Sewer | Miles of Laterals | Total Number of SSO locations per 100 miles of Sewer | Tot Vol of SSOs Reach Surface Water per 100 miles of Sewer | WDID |
|--------|---|------------------------------------|-------------------------------|-------------------------|-------------------------|-------------------------------|-----------------|---------------------|----------------------|---------------------|-------------------|--|--|-----------|
| 9 | AC/S Environmental Security, MCB Camp Pendleton | Usmc Base, Camp Pendleton CS | 19 | 117,521 | 25,091 | 76,056 | 21 | 64 | 32.0 | 104.0 | 80.0 | 8.7 | 35,211.1 | 9SSO10710 |
| 9 | BUENA SANITATION DISTRICT | Buena CS | 2 | 87,200 | 35,800 | 51,400 | 41 | 58 | 8.0 | 98.5 | 0.0 | 1.8 | 48,262.9 | 9SSO10700 |
| 9 | CARLSBAD MWD | Carlsbad MWD CS | 8 | 16,650 | 29,940 | 460 | 179 | 2 | 4.8 | 282.0 | 1.0 | 2.7 | 159.8 | 9SSO11209 |
| 9 | CORONADO CITY | City Of Coronado CS | 2 | 18,000 | 15,000 | 3,000 | 83 | 16 | 6.6 | 39.3 | 1.0 | 4.2 | 6,396.5 | 9SSO10647 |
| 9 | Chula Vista City | City Of Chula Vista CS | 3 | 3,150 | 1,700 | 1,300 | 53 | 41 | 2.6 | 478.0 | 0.0 | 0.6 | 270.4 | 9SSO10646 |
| 9 | Del Mar City | City Of Del Mar CS | 3 | 3,303 | 2,625 | 678 | 79 | 20 | 1.8 | 29.0 | 0.0 | 9.7 | 2,201.2 | 9SSO10648 |
| 9 | EL CAJON CITY OF | City Of El Cajon CS | 1 | 150 | 100 | 50 | 66 | 33 | 0.0 | 195.0 | 0.0 | 0.5 | 25.6 | 9SSO10649 |
| 9 | Escondido City | Harrf Disch To San Elijo Co CS | 5 | 19,069 | 3,094 | 15,975 | 16 | 83 | 10.7 | 365.0 | 0.0 | 1.3 | 4,252.0 | 9SSO10668 |
| 9 | Fallbrook Public Utility Dist | Fallbrook Plant 1, Oceanside of CS | 7 | 15,820 | 625 | 15,195 | 3 | 96 | 4.6 | 76.6 | 0.0 | 8.6 | 18,713.0 | 9SSO10667 |
| 9 | LEMON GROVE CITY OF | City Of Lemon Grove CS | 2 | 1,520 | 500 | 1,020 | 32 | 67 | 0.1 | 62.4 | 0.0 | 3.2 | 1,632.0 | 9SSO10654 |
| 9 | La Mesa City | City Of La Mesa CS | 3 | 1,585 | 550 | 735 | 34 | 46 | 0.0 | 155.0 | 0.0 | 1.9 | 474.1 | 9SSO10652 |
| 9 | Leucadia Wastewater District | Leucadia Wastewater District CS | 2 | 400 | 300 | 100 | 75 | 25 | 11.4 | 191.0 | 0.0 | 0.9 | 49.4 | 9SSO11210 |
| 9 | NATIONAL CITY, CITY OF | City Of National City CS | 1 | 15,000 | 9,000 | 6,000 | 60 | 40 | 1.0 | 96.9 | 10.0 | 0.9 | 5,560.7 | 9SSO10655 |
| 9 | Oceanside PWD | La Salina WWTP, Oceanside Off CS | 16 | 135,548 | 112,015 | 23,397 | 82 | 17 | 39.0 | 450.0 | 0.0 | 3.2 | 4,784.6 | 9SSO10674 |

| | | | | | | | | | | | | | | |
|---|--|--|-----|-----------|---------|---------|----|-----|-------|---------|---------|------|----------|-----------|
| 9 | Padre Dam Municipal Water District | Padre Dam CS | 1 | 28,000 | 0 | 27,500 | 0 | 98 | 5.0 | 161.0 | 0.0 | 0.6 | 16,566.2 | 9SSO10680 |
| 9 | Poway City | City Of Poway CS | 1 | 13,200 | 3,600 | 13,200 | 27 | 100 | 10.0 | 178.0 | 34.0 | 0.4 | 5,945.9 | 9SSO10656 |
| 9 | RAINBOW MWD | Rainbow Municipal Water Dist CS | 2 | 770,200 | 0 | 14,200 | 0 | 1 | 4.0 | 52.0 | 0.0 | 3.5 | 25,357.1 | 9SSO10687 |
| 9 | SOLANA BEACH, CITY | City Of Solana Beach CS | 6 | 25,180 | 15,410 | 9,020 | 61 | 35 | 2.0 | 39.0 | 0.1 | 14.5 | 21,946.4 | 9SSO11172 |
| 9 | San Diego City | San Diego City CS | 85 | 255,639 | 141,296 | 109,485 | 55 | 42 | 139.0 | 2,991.0 | 2,000.0 | 1.6 | 2,134.2 | 9SSO10658 |
| 9 | San Diego County | County Of San Diego CS | 9 | 6,285 | 100 | 5,980 | 1 | 95 | 4.0 | 371.0 | 0.0 | 2.4 | 1,594.6 | 9SSO10662 |
| 9 | San Diego County | Julian Water Pollution Facil. CS | 1 | 850 | 300 | 550 | 35 | 64 | 0.4 | 3.0 | 0.0 | 29.4 | 16,176.4 | 9SSO10673 |
| 9 | UC San Diego | University Of California, San Diego CS | 3 | 4,600 | 0 | 1,600 | 0 | 34 | 2.0 | 25.0 | 3.0 | 10.0 | 5,333.3 | 9SSO10709 |
| 9 | VALLEY CENTER MWD | Lower Moosa Canyon Recl. Facil CS | 1 | 40 | 30 | 10 | 75 | 25 | 5.0 | 50.0 | 7.0 | 1.6 | 16.1 | 9SSO10675 |
| 9 | Vista City | City Of Vista CS | 2 | 800 | 652 | 73 | 81 | 9 | 0.2 | 229.1 | 0.0 | 0.8 | 31.8 | 9SSO10660 |
| | | | 185 | 1,539,710 | 397,725 | 376,984 | | | 294.2 | 6,721.9 | 2,136.1 | | | |

Each individual SSO report contains the data related to one specific location where sewage discharged from the sanitary sewer system due to a failure (e.g., sewer pipe blockage or pump failure). A single failure within a sanitary sewer system can result in multiple sewage discharge locations and, thus, multiple SSO reports. For example, a lift station power failure can result in sewage being discharged from numerous manholes. In this example, a SSO report would be submitted for each manhole that discharged sewage with all reports sharing the same failure or cause data.

It is important to review SSO reports in detail to determine if individual sewage discharge locations share a common underlying failure or cause when assessing the performance of Enrollees and their sanitary sewer systems through SSO events. This is because it is the failures that are the ultimate problem which the Enrollees should be making all reasonable efforts to prevent.

The search results below present summary data for all sewage discharge locations, as submitted through individual SSO reports, which meet the search criteria selected. To determine if SSO reports relate to a common failure within the sanitary sewer system, the SSO reports should be reviewed in detail by selecting the specific "agency" or "collection sys" name from the table below.

The "agency", or Enrollee, listed on a SSO report is responsible for the sewage discharge described and should be contacted directly for questions related to that incident.

The current report was generated with real-time data entered by Enrollees.

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California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Order No. R1-2007-0021

For

Violation of Waste Discharge Requirements
Order No. R1-2004-0013
NPDES No. CA0024449

In the Matter of the
City of Eureka
Elk River Wastewater Treatment Facility
WDID No. 1B82151OHUM

Humboldt County

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board), having received from the City of Eureka (hereinafter Discharger) a waiver of the right to a hearing for violations of Water Code 13385(a) caused by sewer system overflows (SSOs) and failure to meet prohibitions contained in Order No. R1-2004-0013; and having received the Discharger's request for the opportunity to implement a project in lieu of the penalty prescribed, finds the following:

1. The Discharger owns and operates the Elk River Wastewater Treatment Facility (WWTF). The WWTF serves both the Discharger and the surrounding unincorporated areas within the Humboldt Community Services District (HCSD). The WWTF discharges secondary treated domestic wastewater to Humboldt Bay in a manner that is equivalent to an outfall to the Pacific Ocean. Associated with the WWTF is an extensive sanitary sewer system consisting of 125 miles of sewer mains, 9,500 service laterals, 17 lift stations, 3 pump stations, interceptor lines, collection lines and manholes. Sewage lateral lines connected to the public sewer serving buildings on private property are not within the jurisdiction of the Discharger and are the responsibility of the land owner.
2. The Regional Water Board adopted Order No. R1-2004-0013, Waste Discharge Requirements, for the Discharger on March 24, 2004. The Order also serves as a National Pollutant Discharge Elimination System (NPDES) Permit No. CA0024449.
3. Discharge Prohibition A.1 contained in Order No. R1-2004-0013 states that: "The discharge of waste to Humboldt Bay is prohibited unless it is done in such a manner to assure that all wastewater is conveyed to the mouth of the

Bay and dispersed in the Pacific Ocean during periods of ebb tide.”
Discharge Prohibition A.5 states: “The discharge of untreated or partially treated waste from anywhere within the collection, treatment, or disposal system is prohibited”.

4. During the period between October 1, 2004 and March 31, 2006, the Discharger experienced 29 SSOs. Seven of the 29 SSOs were from private homeowner systems and not within the jurisdiction of the City. Of the remaining 22 SSOs, 15 resulted in discharges to receiving waters in violation of Waste Discharge Requirements. All sewage spills were reported to the Regional Water Board in a timely manner. Of the 29 SSOs, 11 were cleaned up and 7 were less than 1000 gallons. The remaining 11 were significant discharges to surface waters with a potential to seriously impact beneficial uses. The significant spills ranged in volume from 1123 gallons to in excess of 200,000 gallons. With the exception of two spills, one caused by a power outage and the other by a pump controller failure at the “O” Street lift station, all the significant spills were the result of inflow and infiltration during rain storms.

Seven of the SSOs occurred at the O Street Pump Station. Four of the seven SSOs were significant and were the result of inflow and infiltration during storm periods. The proposed project, which has been developed as part of the settlement, addresses the issue of overflows from the O Street Pump Station and is described in Finding 6 below.

5. On August 22, 2006, the Executive Officer issued Administrative Civil Liability Complaint No. R1-2006-0091 assessing a civil liability penalty of \$100,000 for violations of prohibitions described in Finding 4 above. The Discharger requested to pay the sum of \$42,500 to the State Water Pollution Cleanup and Abatement Account (CAA) and spend the remaining sum of \$57,500 on a project. The Discharger paid \$42,500 into the CAA on March 5, 2007.
6. The proposed project will divert waste flows from about 110 single family dwellings from the O Street Pump Station to the Golf Course Lift Station. This will require the construction of about 650 lineal feet of sewer line and improvements to the Golf Course Lift Station to handle the additional flows. The upgrades will include converting the dry-well to a wet-well and installing new submersible pumps and a backup generator with an automatic transfer switch in case of power failures. As of February 21, 2007:

The pumps have been purchased and are on site;

The control equipment has been purchased;

The emergency generator has been purchased and;

The construction contract was advertised for public bidding on January 14, 2007 and bids were opened on February 14, 2007.

The construction contract was awarded by the City Council on February 20, 2007. The project will cost in excess of \$200,000 and be completed by August 30, 2007.

7. A duly noticed public hearing on this matter was held before the Regional Water Board on April 26, 2007 at the Regional Water Board office in Santa Rosa, California. The documents for the agenda item were provided to the Discharger and made available to the public prior to the hearing. The Discharger and the public were given the opportunity to testify and present evidence regarding the proposed settlement.
8. At the hearing, the Regional Water Board considered whether to affirm, reject or modify the Administrative Civil Liability Order and any other action appropriate as a result of the hearing.
9. The issuance of this Order is an enforcement action to protect the environment, and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code, §§ 21000-21177) pursuant to title 14, California Code of Regulations, sections 15308 and 15321, subdivision (a)(2).
10. Any person affected by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with section 13320 of the Water Code and title 23, California Code of Regulations, section 2050. The petition must be received by the State Water Board within thirty days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request.

THEREFORE, IT IS HEREBY ORDERED pursuant to Water Code section 13385 that:

1. The Discharger shall be assessed a total civil liability of \$100,000. The Discharger has paid the sum of \$42,500 to the CAA. The Discharger will spend the remaining sum of \$57,500 toward the completion of a project. Upon the Executive Officer's determination that the project, as described in Finding 6 of this Order, has been satisfactorily completed, the \$57,500 suspended liability will be permanently suspended. The Discharger shall submit progress reports describing the planning and construction of the project according to the following time schedule:

| TASK | DUE DATE |
|---|------------------|
| Submit a report describing planning and construction progress associated with the project. | April 30, 2007 |
| Submit a report describing progress of construction activities associated with the project. | June 30, 2007 |
| Submit a report describing progress of construction activities associated with the project. | August 31, 2007 |
| The project should be complete. Submit a final report certifying completion of the project and an overall evaluation of the project and its ability to meet the stated goal of reducing the incidents of Sewer System Overflow at the "O" Street Pump Station. Include a post project accounting of expenditures with proof of payment. | October 31, 2007 |

2. If, given written justification from the Discharger, the Executive Officer determines that a delay in the project implementation schedule was beyond the reasonable control of the Discharger, the Executive Officer may revise the implementation schedule as appropriate. Written justification must be received by the Executive Officer before the specific due date occurs, must describe circumstances causing the delay, and must state when each task of the project will be completed.

3. The remaining penalty amount of \$57,500 shall be permanently suspended if the Executive Officer determines that the Discharger completes the project and provides the Regional Water Board with the scheduled progress reports toward completion of the project and the final report due on October 31, 2007. If the Discharger fails to adequately complete the approved project or fails to complete any of the above-described tasks by the corresponding due date, the Executive Officer may require immediate payment of the suspended liability to the CAA.

It is the Discharger's responsibility to complete the project, regardless of any agreements between the Discharger and any third party contracted to implement the project. Therefore, The Discharger may want to consider a third party performance bond or the inclusion of a penalty clause in their contract. The final report shall contain documentation of expenditures.

If the final total cost of the successfully completed project is less than the amount suspended for completion of the project, the Discharger must remit the difference to the CAA.

Certification

I, Catherine E. Kuhlman, Executive Officer,
do hereby certify that the foregoing is a full, true,
and correct copy of an Order adopted by the
California Regional Water Quality Control Board, North Coast Region,
on April 26, 2007

Catherine E. Kuhlman
Executive Officer

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Order No. R1-2008-0004

For
Discharges in Violation of the Water Quality Control Plan
for the North Coast Region and
State Water Resources Control Board Order No. 2006-0003-DWQ

In the Matter of
City of Sebastopol
Morris Street Pump Station
WDID No. 1B76176OSON

Sonoma County

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board), having received from the City of Sebastopol (hereinafter Discharger) a waiver of the right to a hearing in the matter of civil penalties issued pursuant to Water Code section 13385, subdivisions (a)(2) and (a)(4) for discharges of untreated municipal wastewater in violation of the Water Quality Control Plan for the North Coast Region and in violation of Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems (GWDRs), as a result of Sewer System Overflows (SSOs) and having received a request for the opportunity to implement a Project in lieu of paying a portion of the penalty prescribed, finds the following:

1. The Discharger owns and operates the Morris Street Pump Station (MSPS). The MSPS is located at 275 Morris Street, which is approximately 600 feet north of the Sebastopol Avenue and Morris Street intersection and about 500 feet westerly from the Laguna de Santa Rosa. The MSPS pumps the City's wastewater from the sanitary sewer collection system to the City of Santa Rosa's subregional wastewater treatment plant, which is regulated by Waste Discharge Requirements, NPDES Permit No. CA0022764. The pump station was put into service on September 18, 1978 when the City's wastewater treatment plant was abandoned.
2. Water Code section 13385, subdivision (a)(2) allows the Regional Water Board to assess administrative civil liability against a discharger for violation of any waste discharge requirements. The Discharger's wastewater collection and pumping system is regulated in part by the GWDRs adopted by the State Water Resources Control Board on May 2, 2006. The Discharger enrolled in the GWDRs on October 10, 2006. Order No. 2006-0003-DWQ prohibits the discharge of untreated or partially treated wastewater from sanitary sewer systems to waters of the United States.
3. Water Code section 13385, subdivision (a)(4) allows the Regional Water Board to assess administrative civil liability against a discharger if the discharger violates a discharge prohibition contained in a water quality control plan. The Water Quality Control Plan for the North Coast Region prohibits the discharge of municipal waste into the Russian River or its tributaries unless the waste is advanced treated

wastewater that meets effluent limitations contained in NPDES permits for each discharger.

4. On December 31, 2005, the Laguna de Santa Rosa overflowed its banks and flooded portions of eastern Sebastopol, including Morris Street and the area surrounding the MSPS to a depth of 3 to 4 feet. The MSPS malfunctioned and was flooded on January 2, 2006. The flooding resulted in a discharge of about 7 million gallons of a combination of floodwater and untreated municipal wastewater to the Laguna de Santa Rosa.
5. In a separate incident on April 21, 2007, an overflow occurred from manholes E00-009 and E00-013 near 400 Morris Street. Approximately 18,000 gallons of untreated municipal wastewater was discharged to the Laguna de Santa Rosa via street gutters and storm drains. The cause of the discharge was the result of operator error that occurred during routine cleaning of a solids pit associated with the MSPS.
6. On August 14, 2007, the Assistant Executive Officer issued Administrative Civil Liability Complaint No. R1-2007-0068 (ACLC) assessing a civil liability of \$50,000 for violations described in Findings 4 and 5 above. The Discharger waived its right to a public hearing and requested to pay the sum of \$17,500 to the State Water Pollution Cleanup and Abatement Account (CAA) and spend the remaining balance of \$32,500 on a Project. The Discharger paid \$17,500 into the CAA on September 19, 2007.
7. The proposed Project will upgrade the MSPS by the replacement of two existing 60 horsepower (hp) pumps with two 125 hp pumps and the installation of a third 125 hp pump as a standby unit in case of failure of a main pump. The pumps will include variable drive systems, which will improve the efficiency of the operation. The electrical system will be upgraded as necessary and the backup generator will be upgraded. A Supervisory Control and Data Acquisition (SCADA) system will be installed to allow careful monitoring of pump operations by the operators of the system.
8. Government Code section 11415.60, subdivision (a) states that an agency may formulate and issue a settlement on any terms the parties determine are appropriate. The Regional Water Board and the Discharger concur that the Discharger's proposal described in Findings 6 and 7 is a fair settlement of the ACLC and is in the interest of the public. The proposed settlement has been properly noticed for public review, and the Regional Water Board has considered all comments.
9. A duly noticed public hearing on this matter was held before the Regional Water Board on March 6, 2008 at the River Lodge Conference Center in Fortuna, California. The documents for the agenda item were provided to the Discharger and made available to the public prior to the hearing. The Discharger and the public were given the opportunity to testify and present evidence regarding the proposed settlement.

10. The issuance of this Order is an enforcement action to protect the environment, and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code, §§ 21000-21177) pursuant to title 14, California Code of Regulations, sections 15308 and 15321, subdivision (a)(2).
11. Any person affected by this action of the Regional Water Board may petition the State Water Resources Control Board to review the action in accordance with section 13320 of the Water Code and title 23, California Code of Regulations, section 2050. The petition must be received by the State Water Resources Control Board within thirty days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request.

THEREFORE, IT IS HEREBY ORDERED, pursuant to Water Code section 13385, that:

1. The Discharger shall be assessed a total civil liability of \$50,000. The Discharger has paid the sum of \$17,500 to the CAA. The Discharger shall spend the remaining sum of \$32,500 toward the completion of a Project to upgrade the pumping capacity of the MSPS. Upon the Executive Officer's determination that the Project, as described in Findings 6 and 7 of this Order, has been completed, the remaining \$32,500 liability will be suspended. If the final project cost is less than \$32,500 the remaining balance shall be paid to the CAA. The sum of the project, and the amount paid to the CAA shall at least equal the amount of the full penalty. All payments, including money not used for the project, must be payable to the CAA.
2. The Discharger shall submit progress reports describing the planning and construction of the Project and shall complete the Project according to the following time schedule:

| TASK | DUE DATE |
|---|---|
| Prepare project specifications and bid documents | No later than March 15, 2008 and submit a report of compliance by March 31, 2008. |
| Advertise for bids and award a construction contract. | No later than June 30, 2008 and submit a report by July 15, 2008 describing completion of the task. |
| Commence construction. | No later than July 31, 2008 and submit a report by August 15, 2008 describing completion of the task. |
| Complete construction. | No later than October 31, 2008 and submit a compliance report by November 15, 2008. The report shall describe the completion of the Project and include an overall evaluation of the Project and its ability to meet the stated goal of increasing the pumping capacity of the MSPS and providing improved operational control. |

3. If, given written justification from the Discharger, the Executive Officer determines that a delay in the Project's implementation schedule is beyond the reasonable

control of the Discharger, the Executive Officer may revise the implementation schedule as appropriate. Written justification must be received by the Executive Officer before the specific due date occurs, must describe circumstances causing the delay, and must state when each task of the Project will be completed.

4. Failure to meet the deadlines above, including completing the Project, will result in the Discharger being required to pay the remaining \$32,500 penalty.
5. Notwithstanding the issuance of this Order, the Regional Water Board shall retain continuing jurisdiction to determine compliance with the terms of the suspended penalty provisions above, as well as the authority to assess additional penalties for other violations of the Discharger's waste discharge requirements.

Certification

I, Robert R. Klamt, Interim Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, North Coast Region on March 6, 2008.

Robert R. Klamt
Interim Executive Officer

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

ORDER NO. R2-2009-0026

ADMINISTRATIVE CIVIL LIABILITY FOR:

**SEWERAGE AGENCY OF SOUTHERN MARIN
MILL VALLEY
MARIN COUNTY**

This Order is issued in reference to an adjudicative proceeding initiated by the California Regional Water Quality Control Board, San Francisco Bay Region's (Regional Water Board) issuance of Administrative Civil Liability Complaint No. R2-2008-0070, dated August 11, 2008 (Complaint), which proposed to assess a total of \$1,600,000 against the Sewerage Agency of Southern Marin (SASM) for certain alleged discharges that occurred on January 25 and 31, 2008, in violation of Order No. R2-2007-0056 (NPDES No. CAO037711). The parties to this proceeding are the Regional Water Board's Prosecution Team and SASM (Parties).

The Regional Water Board has been presented with a proposed settlement of the claims alleged in the Complaint, which has been developed during negotiations between the Parties. The Settlement Agreement is attached hereto as **Attachment A**. The proposed Settlement represents a mutually agreed-upon resolution of the Prosecution Team's claims (Claims) through the payment of an administrative civil liability in the amount of \$1,600,000 comprised of a cash payment to the State Water Resources Control Board's (State Water Board) State Water Pollution Cleanup and Abatement Account in the amount of \$800,000 and additional payments in the sum of \$800,000 to support the Supplemental Environmental Programs (SEPs) set forth in **Attachment B**. The Parties recommend that the Regional Water Board issue this Order to effectuate their proposed Settlement.

Having provided public notice of the proposed settlement and not less than thirty (30) days for public comment, the Regional Water Board finds that:

1. The Settlement is in the public interest and the proposed SEPs substantially comply with all essential requirements as set forth in the State Water Board's Enforcement Policy for SEPs.
2. The Executive Officer has considered the exhibits and information in the record and comments provided by the Parties and the public and finds that SASM is subject to civil penalties. In determining the amount of civil liability to be assessed against the SASM, the Executive Officer has taken into consideration the factors described in California Water Code (CWC) Section 13385(e).

The Executive Officer finds that the penalty amount agreed to by the Parties is reasonable based on the factors in CWC Section 13385(e). In addition to these factors, the civil liability recovers the costs incurred by the staff of the Regional

Water Board in evaluating the Claims and preparing the Complaint and related documents.

3. A notice of the Settlement Agreement and assessment of civil liability was published on the Regional Water Board's website notifying the public of a 30-day review period and soliciting public comments on the terms of the proposed Settlement. The proposed Settlement supports the total assessment of administrative civil liability in the amount of \$1,600,000 for the Claims and is in the public interest. This Order provides for the full and final resolution of each of the Claims.
4. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*) in accordance with section 15321, Chapter 3, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED that:

1. Administrative civil liability under California Water Code Section 13385(c) is imposed upon SASM in the amount of \$1,600,000 consisting of a payment of \$800,000 to the State Water Pollution Cleanup and Abatement Account and implementation of the proposed SEPs valued at \$800,000.
2. The SEPs that are supported by contributions from this Order are:
 - a. \$200,000 to the Richardson Bay Audubon Sanctuary's Aramburu Island Clean Up, Restoration, and Enhancement Project; and
 - b. \$600,000 to the Private Lateral Replacement Program.

Details regarding each SEP and implementation requirements and time schedules following implementation are set forth in **Attachment B**.

3. Thirty (30) days following adoption of this Order by the Regional Water Board or approval by the Executive Officer under his delegated authority, SASM shall pay the sum of \$800,000 to the State Water Pollution Cleanup and Abatement Account in accordance with the schedule contained in the Settlement Agreement. Thirty (30) days from adoption of this Order by the Regional Water Board or approval by the Executive Officer under his delegated authority, SASM shall commence implementation of the proposed SEPs. These activities shall be suspended during the time in which any review is sought by any third party under Water Code Sections 13320 or 13330.
4. The Executive Officer is authorized to refer this matter to the Office of the Attorney General for enforcement if SASM fails to comply with paragraphs 1, 2 and 3.

5. Fulfillment of SASM's obligations under this Order constitutes full and final satisfaction of any and all liability for each Claim in the Complaint.

Date: April 8, 2009

Bruce H. Wolfe
Executive Officer

Attachments:

- A. Settlement Agreement
- B. Supplemental Environmental Projects
- C. Spill Table

Attachment A

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

ADMINISTRATIVE CIVIL LIABILITY

COMPLAINT NO. R2-2008-0070

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE – ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R9-2008-0070 (“Agreement”) is made by and between Sewerage Agency of Southern Marin (“SASM”) and the Prosecution Team (“Prosecution Team”) of the Regional Water Quality Control Board, San Francisco Bay (“Regional Water Board”) (collectively, the “Parties”) and effective as of the last date of the signing Parties, with reference to the following facts:

RECITALS:

A. On or about August 11, 2008, the Assistant Executive Officer of the Regional Water Board issued Administrative Civil Liability Complaint No. R8-2008-0070 (the “Complaint”), which sought to impose an Administrative Civil Liability order on SASM for discharges from its treatment plant located in Mill Valley that occurred on January 24 and January 31, 2008 (**Attachment B**)

B. SASM denies the allegations contained in the Complaint. The Parties, through their respective representatives, have reached a proposed settlement that includes the issuance of an Administrative Civil Liability Order (**Attachment A** hereto) for the discharges from SASM’s treatment plant and other discharges from SASM’s facilities that occurred during the period January 1, 2001 to September 30, 2008, as set forth in **Attachment C** hereto. SASM enters into this Agreement without the admission of any fact or adjudication of any issue in this matter. If the Regional Water Board’s Executive Officer or Board Chair chooses to have a hearing on this matter, the Parties agree to present the proposed Administrative Civil Liability Order to the Regional Water Board for issuance at a publicly noticed Regional Water Board Meeting.

C. Under this Settlement, in exchange for a full release of all claims arising out of the specified alleged violations in the Complaint and the discharges described in **Attachment C**, SASM will pay a total liability assessment of \$1,600,000.00 as set forth herein.

D. As a material condition of this Agreement, SASM represents and warrants that the contributions to the projects that would serve as Supplemental Environmental Projects (“SEPs”) under this Agreement (as set forth in **Attachment D** hereto) are not and were not previously being contemplated, in whole or in part, by SASM for any purpose other than to satisfy, in part, SASM’s obligations in

settling the Complaint and that SASM's contributions to the projects that serve as SEPs would not be made in the absence of this enforcement action.

E. In order to facilitate the approval of the proposed settlement, and to carry out its terms, the Parties desire to enter into the following agreement.

NOW, THEREFORE, in exchange for their mutual promises and for other good and valuable consideration specified herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The Parties agree to support, advocate for, and promote the proposed Administrative Civil Liability Order set forth in **Attachment A**.
2. The Parties covenant and agree that they will not contest the proposed Administrative Civil Liability Order before the Regional Water Board, the State Water Resources Control Board, or any court.
3. SASM agrees to pay the proposed Administrative Civil Liability Order of \$1,600,000.00 for the discharges from the SASM treatment plant and other discharges from SASM's facilities that occurred during the period January 1, 2001 to September 30, 2008, as follows:
 - a. Pay \$800,000.00 to the State Water Resources Control Board Cleanup and Abatement Account in three payments, with the first payment of \$300,000.00 being due as provided in Section 4 below. The second payment of \$250,000.00 must be received by April 14, 2010 at the office of the Regional Water Board. The third and final payment of \$250,000 must be received by April 14, 2011 at the office of the Regional Water Board. The payments are not subject to interest thereon.
 - b. Fund and implement Supplemental Environmental Projects ("SEPs") in the amount of an additional \$800,000.00 as follows:
 1. \$200,000.00 to the Richardson Bay Aramburu Island Project; and
 2. \$600,000.00 for the Private Lateral Replacement Program.

Each of these SEPs is described in detail in **Attachment D** hereto, including schedules for implementation.

4. SASM will make the first payment of \$300,000.00 by delivering a check to the Executive Officer of the Regional Water Board within 30 days of approval by the Regional Water Board or its Executive Officer of the proposed Administrative Civil Liability Order.

5. SASM agrees that if it fails to make any payment as provided herein or to implement any SEP as set forth in the schedule for that SEP by the deadline, all payments due after that, including SEP payments, become immediately due and payable to the State Water Resources Control Board's Cleanup and Abatement Account, and that the Regional Water Board may immediately seek an order under Water Code Section 13328 in a court of competent jurisdiction requiring payment of the entire remaining amount.

6. The Prosecution Team agrees to submit a request to the Regional Water Board asking that it adopt a resolution to be submitted to the Cleanup and Abatement Account to request additional money from the CAA (up to \$800,000) to support the Richardson Bay Aramburu Island Project.

7. SASM agrees that if it or a related agency publicizes the SEPs or the results of the SEPs, it will state in a prominent manner that the SEP is being undertaken as part of the settlement of this enforcement action by the San Francisco Regional Water Quality Control Board.

8. In the event that any of the SEPs described in **Attachment D** cannot be performed for any reason as determined by the Executive Officer, then the penalty amount designated for that SEP shall be directed to another SEP approved by the Executive Officer after consultation with SASM's representatives. In the event that no alternative SEP(s) are agreed upon between the Executive Officer and SASM following a 90-day consultation period, the remaining funds shall become immediately due and payable to the State Water Resources Control Board's Cleanup and Abatement Account. The approval of another SEP by the Executive Officer as contemplated by this paragraph cannot be unreasonably withheld.

9. The Regional Water Board agrees that this settlement fully resolves the allegations in the Complaint and all discharges listed in **Attachment C** and that it will not to pursue any action of any kind for those discharges.

10. Performance of paragraph 3 and 4 (and if applicable, paragraphs 5 and 8) shall effect a mutual release and discharge of the Parties and their respective successors and assigns, agents, attorneys, employees, officers, and representatives from any and all claims, demands, actions, causes of action, obligations, damages, penalties, liabilities, debts, losses, interest, costs, or expenses of whatever nature, character, or description, that they may have or claim to have against one another by reason of any matter or omission arising from any cause whatsoever relating to the proposed Administrative Civil Liability Order, the discharges, or the Complaint.

11. SASM agrees to a limited waiver of the requirement to have a hearing on the Complaint within 90 days of service under Water Code section 13323(b)

conditioned on the hearing on the proposed settlement and on the Complaint, if necessary, being conducted at the next regularly scheduled board meeting.

In the event that the Regional Water Board does not approve the proposed Administrative Civil Liability Order or the Order is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing at the next scheduled Regional Water Board meeting.

The Parties also agree that, in the event that the Regional Water Board does not approve the proposed settlement, they waive any and all objections related to their attempt to settle this matter, including, but not limited to, objections related to prejudice or bias of any of the board members or their advisors and any other objections that are premised in whole or in part on the fact that the board members and their advisors were exposed to some of the material facts and the Parties' settlement positions and, therefore, may have formed impressions or conclusions prior to conducting an evidentiary hearing on the merits of the Administrative Civil Liability Complaint.

12. The Parties intend that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected by the proposed Administrative Civil Liability Order and this Agreement will be legally sufficient. In the event that objections are raised during the public comment period for the proposed Administrative Civil Liability Order, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

13. Each person executing this Agreement in a representative capacity represents and warrants that he or she is authorized to execute this Agreement on behalf of and to bind the entity on whose behalf he or she executes the Agreement.

14. This Agreement shall not be construed against the Party preparing it, but shall be construed as if the Parties jointly prepared this Agreement and any uncertainty and ambiguity shall not be interpreted against any one Party.

15. This Agreement shall not be modified by any of the Parties by oral representation made before or after the execution of this Agreement. All modifications must be in writing and signed by the Parties.

16. Each Party to this Agreement shall bear its own attorneys' fees and costs arising from that Party's own counsel in connection with the matters referred to herein.

17. The Parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

18. This Agreement shall be executed as duplicate originals, each of which shall be deemed an original Agreement, and all of which shall constitute one agreement to be effective as of the Effective Date. Facsimile or electronic signatures are acceptable.

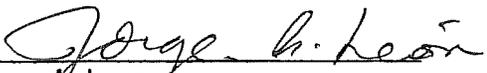
19. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set forth above.

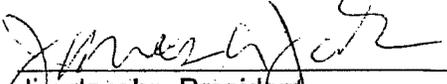
REGIONAL BOARD PROSECUTION TEAM by:

 Date: _____
Dyan C. Whyte
Assistant Executive Officer

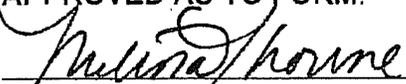
APPROVED AS TO FORM:

 Date: 2/13/09
Jorge A. Leon
Office of Chief Counsel
Counsel to the Regional Water Board Prosecution Team

SEWERAGE AGENCY OF SOUTHERN MARIN by:

 Date: 2/12/09
Jim Jacobs, President
Sewerage Agency of Southern Marin Board

APPROVED AS TO FORM:

 Date: 2/12/09
Melissa A. Thorne
Downey Brand LLP
Counsel to the Sewerage Agency of Southern Marin

Attachment B

Sewerage Agency of Southern Marin Supplemental Environmental Project (SEP) Proposals

On August 11, 2008, the San Francisco Bay region of the California Regional Water Quality Control Board (Regional Water Board) issued an Administrative Civil Liability (ACL) Complaint the Sewerage Agency of Southern Marin (SASM) for violations of California Water Code section 13385. Pursuant to a settlement agreement and subsequent order of the Regional Water Board, the fine was set at \$1,600,000 with \$800,000 to be paid in cash to the Cleanup and Abatement Account (CAA) and \$800,000 to be satisfied through the development and expense of one or more Supplemental Environmental Projects (SEPs). SASM will pay the cash portion of the fine consistent with the settlement agreement once it is finalized. Because of the amount of funds that will be available, two SEPs are proposed by SASM, each of which are subject to approval by the Regional Water Board.

Following are the proposed SEPs that will share and benefit from the \$800,000 earmarked for SEPs.

- Private Lateral Replacement Project - \$600,000
- Richardson Bay Aramburu Island Restoration Project - \$200,000

Each proposed SEP is described in greater detail.

SASM understands that based upon the State Water Resources Control Board's Enforcement Policy criteria that SEPs should be an extension of SASM's commitment to improving the quality of the waters of the State, benefit the public or environment in which the alleged violations occurred, and that any SEP should represent a program that is not otherwise required of SASM in its NPDES permit. We believe that these proposed SEPs would accomplish that goal.

Project Name: Private Lateral Replacement Project (PLRP)

Location: City of Mill Valley, Richardson Bay Sanitary District, Almonte, Alto and Homestead Valley Sanitary Districts and the Kay Park area of Tamalpais Community Services District.

Name of Contact: Stephen Danehy (415) 288-2402
Sewerage Agency of Southern Marin

Category: Pollution Prevention and Reduction and Public Awareness

General Cost: \$200,000.00 for grant program
\$400,000.00 for loan program

Duration: 5 years from approval, with provisions for extension for another 5 years if necessary.

Background

In 2005, the Regional Water Board adopted Resolution No. R2-2005-0059 - "In Support of Programs for Inspection and Rehabilitation of Private Sewer Lateral," which officially recognized that sewer laterals in poor condition may cause surcharging of public sewers, overload pump stations and wastewater treatment plants, and potentially pose localized human health and environmental risks. Local programs for inspection and rehabilitation of private laterals represent one means of assuring that laterals are not a source of unreasonable amounts of inflow and infiltration or blockages. The Resolution states that the Regional Water Board supports and encourages local communities and sanitary sewer collection system agencies, especially those experiencing significant infiltration and inflow from private sewer laterals, to have a program that requires inspection and rehabilitation of private sewer laterals.

Wastewater flow is comprised of mostly residential wastewater. The geography of the area lends to high infiltration rates in damaged or deteriorating lines. Flow to the SASM Wastewater Treatment Plant can increase on a scale of 10 to 1 or more. This means that possibly several million gallons per day may enter the system from infiltration or inflow.

Once the initial loan program is completed, SASM intends to continue the loan program at a rate of \$50,000 per year.

SEP Requirements

SEP proposals must conform to the requirements specified by the State Water Resources Control Board in the Water Quality Enforcement Policy (WQEP) and the Regional Water Board's Standard Criteria and Reporting Requirement for SEPs.

Section IX.E of the WQEP states that a SEP(s) must have an appropriate nexus between the alleged violations and the SEP. The proposed SEP should be related both

geographically and in violation type. Excessive infiltration and inflow into the collection system may contribute to sanitary sewer overflows (SSOs) and wet weather sewage discharges to Richardson Bay. The proposed SEP addresses this problem in the SASM service area in the collection systems owned and operated by satellite agencies.

The Private Lateral Replacement Project (PLRP) is designed to reduce the amount of inflow and infiltration (I&I) in the SASM sanitary sewer systems. This PLRP will benefit the people and water quality in the watershed by reducing SSOs and wet weather sewage discharges to Richardson Bay through incentivizing and enabling the replacement of privately owned sewer laterals. The SASM service area consists of approximately 160 miles of collector lines owned and operated by the member agencies of SASM and approximately 150 miles of private laterals that connect to the main collector lines. Studies have shown that as much as 50% of I&I can be attributed to private laterals. Excessive I&I have led to overflows at the SASM wastewater treatment plant and may contribute to sanitary sewer overflows. Defective private laterals may also allow exfiltration of sewage to groundwater.

SASM and the member agencies do not own the lateral lines that connect private properties to the sanitary sewer system, so this SEP will not directly benefit SASM or its member agencies.

This PLRP fits the categories of pollution prevention and public awareness. In addition to funds directed at replacing, or assisting in the replacement, of private laterals, there will be educational material created and disseminated about the connections between private laterals and the public sewer system, and the problems that arise from defects in either.

The PLRP will consist of two programs: a grant program for low income property owners and a low interest loan program. The details of each of these program elements of the PLRP are described in more detail below.

Description: Studies have shown that many SSOs reported in the past years have been traced to poor lateral maintenance and repair by residents. Old pipes may be cracked, have open joints, or become misaligned resulting in I&I. Left unrepaired, tree roots or materials traveling through the pipe can get caught and back up the system. If this happens past the sewer cleanout, if one exists, a backup will occur and potentially allow for spills into the street through the clean out. The cost to repair laterals is expensive and many residents opt to pay for regular cleaning or live with slow drains rather than replace lateral lines that have opened to root intrusion and alignment problems.

As an incentive, the PLRP would provide grants and low interest loans to video inspect and replace the lateral. SASM will place and retain the money for the lateral programs in a separate account to be used solely for grants and low interest loans under the PLRP. For the grant program, matching funds of 50% per lateral will be provided to property owners meeting the criteria until the set budget (about \$200,000) for this program

is expended. At an estimated \$250 for video inspection and \$6,000 for replacement or rehabilitation per connection at 50% grant funded, it is anticipated that this grant program would impact approximately 64 homes below 70% of the median income level.

For the loan program, low interest loans of 2 percentage points below the prime rate will be made available to home owners, for a term of between 1 and 3 years at each homeowner's option. As this program progresses, the maximum term of new loans must be shortened accordingly to ensure full payment of loaned funds within the 5-year term of the PLRP. In addition, up to \$150 per lateral will be provided as a grant to incentivize the video inspection of private laterals. Some homeowners may choose to replace their defective laterals without further financial aid. Other homeowner's may finance the balance of the cost of video. Loan payments received will be returned to the program to fund additional loans and video inspection grants until the set budget (about \$400,000) for this program is expended. For loans in default, SASM shall make every effort to recover the funds, and if it fails to do so, shall make up for half of the defaulted amount. At an approximate cost of \$250 for video inspection and \$6,000 for rehabilitation per lateral and an estimated average loan term of 2 years, this loan program would enable the replacement of about 150 private laterals. This estimate will be lower if more laterals receive video inspections that are partially funded by grants.

Loan funds not spent by the 5-year deadline of the program shall be paid to the State's Cleanup and Abatement Account or, alternatively, SASM may make a request to the Regional Water Board's Executive Officer that the term of the project be extended. The extension must identify the amount of funds remaining, specify the term of the extension requested, which shall not go beyond 10 years from the initiation of the project, and must provide for additional third party oversight/audit costs.

To maximize the effectiveness of the grant and loan programs, the PLRP will include

- identification of target areas with high I&I,
- smoke testing of homes in those areas,
- community outreach, and
- identification of qualified contractors who will perform video inspection and rehabilitation work at pre-set prices

Currently, SASM is studying the "sewersheds" that make up the SASM service area. Analysis will better determine the area in most need of repair. SASM will identify from 2 to 5 such areas. These areas will be targeted for the PLRP. At SASM's cost, smoke testing will be conducted at homes in these areas as a preliminary assessment of the defective laterals.

The community outreach and education will inform the homeowners in the targeted areas about I&I problems, how they can help resolve those issues, identify the grants and loans programs available to assist them, and list pre-qualified contractors with pre-set prices that are available to do the work. This component would start before and would continue during the time of the PLRP and may extend beyond the target areas though priority for grants will be given to those from the target areas.

SASM, at its own cost, will identify a short list of pre-qualified contractors that will agree to do work at a pre-set price. This will serve two purposes: ensure that the work will be done correctly, and relieve the homeowners of the burden of finding his/her own contractor. This task will also provide an opportunity for SASM to negotiate pre-set prices for the work, which can be more competitive than market prices because of economies-of-scale. In other words, pre-qualified contractors can expect more work in a particular area because they will be identified in SASM's outreach material, and can thus save costs for mobilization to that area to perform work for multiple homes.

An ordinance will be developed for the inspection, maintenance and replacement of lateral sewer lines that will be presented to the SASM member agencies for adoption. SASM is currently participating in the North Bay Watershed Association "Clean Green Lateral Program," which is supported by wastewater agencies throughout Marin County.

At its own cost, SASM will compile information as to the length of pipe replaced, rehabbed, conditions found during replacement, and other conditions as appropriate. Additionally, SASM will continue flow monitoring to assess the success of lateral repairs/replacements in a targeted area.

Grant Criteria: The intent of the grant program is to provide funds to owner occupied single family homeowners in the SASM sewer service area that are 70% below the median individual income for Marin County. For homes with joint ownership, this criterion will be met using the arithmetic average of the incomes of all the owners. Also, at least one of the owners must use the house as his or her primary residence. The California Franchise Tax Board most recent report states that the median individual income of Marin County in 2006 was \$116,626.

Loan Criteria: The intent of the loan program is to provide low interest loans to owner occupied single family homeowners in the SASM sewer service area. The loan program would not be available for commercial or multi-residential units (apartment buildings).

Education: As noted previously, SASM will establish a public education program regarding private laterals, problems that can be encountered, routine maintenance, and the homeowners' responsibilities. At the same time, this

program will make the public aware of information through SASM's website posting and individual mailers that SASM will be providing grants and loans to repair/replace lateral lines. Educational informational about the grant and loan programs shall indicate that these programs are being performed in fulfillment of a settlement of an enforcement action with the Regional Water Board. SASM will also continue to participate in the North Bay Watershed Association public outreach programs as well as to develop localized (service area) public education programs.

| <i>Budget/Cost:</i> | <u>Task</u> | <u>Budget</u> |
|---------------------|--|------------------|
| | Development and Implementation of Education and Promotion for PLRP | \$ 2,000 |
| | Grants to low income homeowners* | \$190,000 |
| | Low Interest Loans and video inspection grants to homeowners* | \$397,000 |
| | Project Administration by SASM | \$ 0 |
| | Third Party Oversight by San Francisco Estuary Project | <u>\$ 11,000</u> |
| | Total for PLRP | \$600,000 |

* 2 years after project initiation, SASM may request shifting of funds from the grant program into the loan program or visa versa, depending on the level of use of one program over the other. Additional third party oversight costs will be determined by the Executive Officer for the remainder of the project at that time and shall not be from the original project budget, but shall be in addition to the budget and paid for by SASM.

Project Timetable and Milestones:

| <u>Task</u> | <u>Timeline</u> |
|--|--|
| Identify 2-5 target areas from flow monitoring | Within 2 months of project initiation* |
| Develop outreach material and strategy for implementation, and model lateral ordinance, and submit a copy of outreach material to Regional Water Board | Within 3 months of project initiation |
| Complete smoke testing in target areas, and provide ordinance to SASM member agencies for adoption | Within 4 months of project initiation |
| Complete list of pre-qualified contractors for video inspection and rehabilitation of private laterals at pre-fixed prices | Within 5 months of project initiation |
| Begin public education and outreach, and begin to accept and evaluate grant/loan applications | Within 5 months of project initiation |
| Begin PLRP to provide grants/loans | Within 6 months of project initiation |
| Begin video inspections of suspect laterals and repair/rehabilitation of defective laterals | Within 6 months of project initiation |
| Determine if budget for grants and loans need adjustment and request Regional Water Board approval as appropriate | 2 years after project initiation |
| Complete PLRP or pay Cleanup and Abatement the balance of unspent grant or loan funds | Within 5 years of project initiation** |

* *Project initiation shall begin within 40 days after approval of the project by the Regional Water Board or its Executive Officer.*

** *This 5-year term may be extended for up to 5 years for a total project term of 10 years if approved by the Regional Water Board's Executive Officer based on a request by SASM as described above.*

Reporting: Progress reporting will be made to the Regional Water Board and the oversight/audit organization identified below on a quarterly basis from the start of the PLRP for 2 years (a total of eight reports). After two years,

progress reports will be made on an annual basis until project completion (for remaining 3 years). Quarterly progress reports are due on the first of each calendar quarter; annual reports are due on January 2 of each year.

A final report shall be made to the Regional Water Board and the oversight/audit organization identified below by July 1st five years after PLRP initiation. This timing is intended to allow SASM time to collect system flow data to show whether the flow reduction measure of success was achieved in the targeted areas. Records of project accounts, expenses and improvements shall be maintained by SASM.

Each progress report shall describe the tasks completed along with their results (i.e., target areas identified, number of laterals videoed, etc.), monies expended for each task since the last report, and progress of compliance with the project timetable and milestones. The final report shall describe the tasks completed, an accounting of funds expended, and describe whether the measures of success detailed below were met, and if not met, identify possible reasons for why they were not met and suggestions for changes to project elements and strategies to guide future efforts by SASM or others.

If SASM requests and is granted an extension of the project, a final report for the first 5 years is still due on the date specified above, and the conditions of the extension will specify reporting requirements for the term of the extension.

Measures of Success:

The measures of success of this project include the following:

- The replacement or rehabilitation of approximately 200 defective private sewer laterals in the SASM service area that were financially assisted with either the grant or loan program.
- An average of 25% reduction in peak wet weather flows from service areas targeted by the PLRP
- Video inspections of 400 laterals
- Mailers of educational material on PLRP to 500 homeowners
- Posting of educational material on SASM website

Project Oversight/Audit:

To ensure completion of commitments and appropriate expenditure of funds, oversight and audit of the project will be conducted by the San Francisco Estuary Project. All reports must be sent to the following:

Carol Thornton
Contractor to San Francisco Estuary Project
1515 Clay Street, Suite 1400
Oakland, CA 94612
(510) 622-2419
cThornton@waterboards.ca.gov

SUPPLEMENTAL ENVIRONMENTAL PROJECT ARAMBURU ISLAND

Project Name: Aramburu Island Restoration and Enhancement Project

Location: Richardson Bay, Marin County

Name of Contact: Brooke Langston, 415-388-2524
Richardson Bay Audubon Center

Category: Environmental Restoration and Protection

General Cost: \$200,000.00

Duration: 2 years from approval

1.0 Introduction

On August 11, 2008, the San Francisco Bay region of the California Regional Water Quality Control Board (Regional Water Board) issued an Administrative Civil Liability (ACL) Complaint the Sewerage Agency of Southern Marin (SASM) for violations of California Water Code section 13385. Pursuant to a settlement agreement and subsequent order of the Regional Water Board, the fine was set at \$1,600,000 with \$800,000 to be paid in cash to the Cleanup and Abatement Account (CAA) and \$800,000 to be satisfied through the development and expense of one or more Supplemental Environmental Projects (SEPs). The purpose of this document is to describe the Aramburu Island Restoration and Enhancement Project (the project) in Richardson Bay, Marin County, California. This project meets the qualifications as an SEP in that considerable, tangible progress toward completing the restoration goals of the project will be made with use of the SEP funds.

1.1 Requirements for SEPs

SEP proposals must conform to the requirements specified by the State Water Resources Control Board in the Water Quality Enforcement Policy (WQEP) and the Regional Board Water Board's Standard Criteria and Reporting Requirement for SEP's. Section IX.E of the WQEP state that the SEP(s) must have an appropriate nexus between the alleged violations and the SEP. The proposed Aramburu Island project is related geographically

(Figure 1). Overflows from the Equalization Ponds flowed directly into Pickleweed Inlet, a tributary to Richardson Bay and may have negatively impacted Aramburu Island. The fact that the proposed restoration site is an island makes it a highly desirable target for habitat restoration in the heavily urbanized Richardson Bay area as it is relatively isolated from surrounding human disturbances and terrestrial predators. The unique position of the island within Richardson Bay, and its topographic and substrate variability, offer a rare opportunity to restore a variety of habitats that will have great biological value while maintaining resiliency to rising sea levels.

1.2 Project Environmental Benefits

The primary goals of this project are to:

1. **Rehabilitate existing tidal marsh, tidal flat, shoreline, and grassland habitats and establish gradual transition zones (ecotones) that support diverse native vegetation types and optimum wildlife habitats** for shorebirds, waterfowl, marine mammals, and special-status native plant species.
2. **Expand existing sand and gravel spit shorebird roosting habitats, and reduce wave erosion and shoreline retreat**, by selective placement (replenishment) of bay sand and gravel beach sediments with appropriate grain sizes for incident wave energy.
3. **Maintain topographic heterogeneity on the island** to facilitate gradual transgression of resilient tidal wetlands during sea level rise (submergence of uplands)
4. **Establish additional roost habitat** for herons and egrets by placement of persistent large woody debris in storm drift-lines, and creating snags on the island.

The Aramburu Island SEP will improve habitat for resident and migratory birds, such as the San Pablo song sparrow, the salt marsh yellowthroat, shorebirds and terns, as well as mammals such as the harbor seal. The replacement of eroded, steep, rubble-dominated retreating, artificial shorelines by gradually sloping sand beaches, sand flats, and gravel/shell/sand berms, would be likely to provide high tide roosts for shorebirds, terns, and gulls, and may potentially facilitate re-use of the island as a seal haul-out. The island's terrestrial sediments exposed in the high salt marsh edge provide highly suitable conditions for the regionally rare salt marsh annuals, Point Reyes bird's-beak, salt marsh owl's-clover, and smooth goldfields. In addition, erosion reduction measures may have indirect benefits for adjacent subtidal habitats, including native eelgrass that is likely to be limited by turbidity due to locally resuspended fine sediment.

The project will contribute to the regional restoration effort presented in the Baylands Ecosystem Habitat Goals Report, which specifically identified the following recommended restoration and management actions for “Strawberry Spit” (of which Aramburu Island was formerly a part) and Richardson Bay (Goals Report, p. 117 and Appendix D) that are incorporated in the preliminary conceptual project design:

- Protect and enhance harbor seal haul-out sites at Strawberry Spit
- In Richardson Bay, restore and enhance fringing marsh along northwest edge for Point Reyes bird’s-beak
- Restore and enhance tidal marsh
- Restore high marsh near populations of rare and uncommon salt marsh plants to enable their expansion

2.0 Project Description

This section describes the preliminary conceptual restoration alternative that is currently preferred. Its ecological engineering design concepts are based on initial qualitative assessments of field conditions of the site and its setting within Richardson Bay, and preliminary evaluation of opportunities and constraints. These concepts will be developed in further detail in a subsequent Conceptual Restoration and Enhancement Plan, incorporating the results of data collection and community outreach activities. This description however, should provide basic descriptive information on the proposed restoration/enhancement components, planning and construction timelines, and overall project budget to allow the funding and regulatory agencies to make an informed decision on the suitability of this project for funding as an SEP.

2.1 Site Description

Richardson Bay is a sensitive water body that historically provided a rich assortment of ecological benefits to wildlife and human communities. Intense urbanization of the surrounding area has significantly degraded these benefits. Native fish, waterfowl, shorebird and plant populations have declined precipitously over several decades. Urbanization has also increased flooding of developed areas and degraded human recreation opportunities by polluting the waters and privatizing the shoreline. Historic U.S. Coast Survey maps of Richardson Bay prepared in the 1850s represented fringing salt marshes, small pockets of bay-head salt marsh and tidal creek systems, wide tidal flats, and pockets of barrier beaches.

Aramburu Island is located in the northwest region of Richardson Bay on the east side of the Strawberry Point (Figure 1). The island was initially a peninsula off the mainland created by deposition of dredge spoils and hillslope fill in the early 1960s during the

construction of residential housing on Strawberry Point/Spit. The undeveloped portion of the peninsula offered attractive habitats for shorebirds, waterfowl, and harbor seals and these species began using the area shortly after its construction. In 1987 a channel was cut between the developed and undeveloped portions of the peninsula, forming what is now the 17-acre Aramburu Island (Figure 2). This cut was made to provide a buffer between the wildlife that had begun using the island and the human community on Strawberry Point. In addition, a new beach area was constructed on the north end of the island to improve harbor seal haul-out habitat. Despite these improvements, the island was slowly abandoned by the seals. The island is currently owned by Marin County and managed as part of the Richardson Bay Audubon Sanctuary. In its current configuration, the island offers marginal habitat for wildlife, but presents several distinct opportunities for enhancing these habitat values.

An overview of current conditions on Aramburu Island is displayed in Figure 3. The island currently supports mostly weedy upland plant communities (primarily non-native grassland) on artificial fill soils. A large swath of this upland habitat is heavily goose-grazed to a low turf (Photo 1), while other areas are dominated by bunch grasses and invasive species such as French broom and Italian thistle, which are unpalatable to geese (Photo 2). Small oak groves also exist on the northern end of the island (Photo 3). Fringing tidal marsh is present along some of the island's margin.

The eastern shore of the island is subject to high wave energy and a steep, wave-cut erosional shoreline has developed (Photo 4). As the compacted upland fill shorelines facing the bay retreat, a rough, rocky intertidal shelf expands in the footprint of the original fill. The fill contains insufficient sand and gravel sediments to form substantial bay beaches in response to waves. Two coves partially sheltered by gravel point bars (Photo 5) were constructed as harbor seal haul-out sites (subsequently abandoned by the seals) along the eastern shoreline and support back-barrier tidal marshes and mudflats. A steep engineered boulder (rock rip-rap) revetment stabilizes the banks facing the channel that isolates the island from Strawberry Spit.

2.2 Restoration/Enhancement Design Opportunities

The artificial terrestrial fill substrates of Aramburu Island, and its exposure to episodes of high wave energy during storms, are currently liabilities for its unmanaged habitat structure and geomorphic evolution: they have resulted in dominance by weeds, erosional scarps with poor access for harbor seals, and poor development of salt marsh and mudflats. The same physical characteristics, however, can potentially be modified to become assets and opportunities to rehabilitate distinctive shoreline and wetland habitats representing lost habitat types and ecological functions in Richardson Bay. Based on preliminary field assessments of the site, as well as reference sites in Richardson Bay and

comparable sites in San Francisco Bay, the following habitat types and ecological functions appear to be feasible and appropriate for rehabilitation on the island:

2.2.1 Bay beach and sand flat

Richardson Bay formerly supported estuarine (bay) beaches associated with sheltered flats and marshes (including historic barrier beaches linking Belvedere to the mainland). Bay beaches form naturally where wind-waves from the open bay are supplied with erosional sources of sand or gravel, and a receptive shoreline for deposition. Such settings are mostly eliminated from Richardson Bay today. Modification of the wave-cut scarp (low cliff) shoreline configuration on the eastern (Bay) shore of Aramburu Island, combined with nourishment of imported natural bay sand, shell fragments, and gravels, has the potential to establish a beach shore profile over the existing erosional fill shelf.

Physically, beach nourishment would buffer wave erosion of the scarp, mantle the erosional shelf with upper intertidal sand flats, and naturally form emergent beach ridges and spits. With sufficient sediment supply, bay beaches can migrate landward and adjust in elevation to rising sea level. Naturally graded sands, shell, and gravel would esthetically replace eroded, rocky upland fill (Photo 6).

Ecologically, extensive beach and sandy foreshore habitats at Aramburu Island – especially elongated sand and gravel spits – would be likely to function as high tide roosts for migratory shorebirds, intertidal foraging habitat for shorebirds, and roosts for terns (Forster's, Caspian, and possibly also endangered California Least Terns, which recently have opportunistically colonized artificial island-like sand deposits at Montezuma Wetlands in Suisun Marsh, Solano County). Western snowy plovers have also been observed at isolated bay beaches, and could potentially exploit extensive, isolated new beach habitats at Aramburu Island. The relatively high, unvegetated intertidal elevations of sandy foreshores (in the elevation range of tidal marsh) may provide valuable shorebird foraging habitat during higher tidal stages. In addition, the smooth, ramp-like profile of beaches at Aramburu Island may approximate other isolated bay beach shorelines that are attractive as haul-outs for seals, particularly where beach slopes are near deep water channels for rapid escape.

Beach ridges formed by the highest tides and waves would support scarce elements of San Francisco Bay's native estuarine beach flora, including beach-bur, western ragweed, cressa, poverty-weed, and Pacific dunegrass.

2.2.2 High tidal marsh

Richardson Bay supports some of the largest remaining populations of the northern

subspecies of salt marsh bird's-beak (a.k.a. Point Reyes bird's-beak). This species has found refuge in sparse, short cover of pickleweed and sea-lavender growing on eroded artificial terrestrial sediments in the high tide lines north of Sausalito. Very similar soil and vegetation conditions exist at Aramburu Island. With suitable shallow grading and moderated exposure to wave erosion, substantial populations of salt marsh bird's-beak and associated regionally rare salt marsh annuals (such as salt marsh owl's-clover and smooth goldfields) could potentially be established at Aramburu Island, consistent with the Goals Project recommendations (Photo 7).

2.2.3 High tidal marsh-terrestrial grassland transition zones

There are few places in San Francisco Bay where natural slopes support transitions between native lowland grasslands, sedge-rush meadows, and thickets of native perennial forbs (Photo 8). One large colony of a creeping sedge native to salt marsh edges has established spontaneously in a clay soil pocket depression on the island, indicating the potential for the rest of its associated plant community to be established as well. Re-grading the soils, and redistributing a surface soil layer rich in clay and organic matter could support native perennial colonial grasses, sedges, rushes, and forbs that naturally form transition zones with salt marshes. These colonial species also provide relatively high long-term resistance to invasion by weeds. As sea level rises, this community could form a sloping platform for future tidal marsh, resulting in ecosystem resilience rather than tidal marsh drowning.

2.2.4 Seasonal nontidal pools and marsh

Within constructed lowland grasslands, depressions could be sculpted and capped with relatively impermeable clay soils to form rain-fed pools with a seasonal marsh flora including many vernal pool species of Marin County, including water-starwort, toad rush, spikerush, flowering-quillwort, and popcorn-flower (Photo 9). Other wet depressions could form seasonal marshes covered with low-growing creeping sedges. Seasonal wetlands can provide high tide roosts and foraging opportunities for migratory shorebirds and dabbling ducks, and may potentially support tree frogs (prey base for egrets, herons) and mallard nesting habitat.

2.2.5 Snag and large woody debris sub-habitats

San Francisco Bay's tributary streams and rivers have lost their supply of large decadent riparian trees that would have supplied tidal marshes with large woody debris. Egrets, herons, and tidal marsh subspecies of song sparrows use large woody debris (decaying persistent logs and limbs) in tidal marshes as perches and roosts (Photo 10). Importing large woody debris to the island would increase its structural habitat diversity and replace lost or deficient subhabitat elements of tidal marsh.

2.3 Preliminary Conceptual Enhancement Design

The preliminary conceptual enhancement design for Aramburu Island is displayed in Figure 4. We emphasize that the landscape configuration displayed in this figure is a preliminary draft based on our early site reconnaissance and data collection activities and input from various stakeholders. The locations, quantities, and dimensions of all enhancement elements may be changed based on the outcome of future investigations and deliberations.

The landscape and habitat design compresses several related marsh shoreline and terrestrial ecotone types (transition zones) known from modern and historic Marin County bayshores, with emphasis on Richardson Bay. They are adapted to the steep environmental gradients of the artificial island's setting in contemporary Richardson Bay. The individual enhancement elements are described below.

2.3.1 Bay beach and sand flat

As described above, the east-facing shore of the island is currently erosional and highly exposed to infrequent but energetic southerly storm waves from the Central Bay. Waves have eroded scarps (low cliffs) and a shelf of rock and mud in artificial terrestrial fill on the east shore.

We propose to address ongoing eastern shore erosion by nourishing the shoreline with natural sand and gravels from San Francisco Bay. Sand, shell, and gravel material will be imported to the site via barge and deposited in three beach enrichment locations along the eastern shoreline. Waves will rework coarser sand and gravel into narrow, steep beach ridges and spits at the high tide line, while the gentler gradient of the low tide terrace will form protective intertidal sand flats.

Low retention barriers to longshore drift (rock micro-groins not exceeding beach height) will be constructed at intervals along the shoreline to aid in the development of beach cells and increase residence time. In addition, a high beach terrace will be constructed at the updrift (southern) end of the island. This feature will provide a re-nourishment (sand and gravel discharge) point for the fringing beach system. This feature is located near the position of historic seal haul-outs adjacent to deep water escape habitat in the navigational channel and therefore may encourage seal use.

This beach and sand flat matrix will reduce the rate of shoreline erosion and add significant habitat benefits for shorebirds and potentially harbor seals. We consider beach nourishment an environmentally superior and more sustainable approach compared to conventionally engineered armoring and stabilization of the shoreline.

2.3.2 Tidal marsh

Along the eastern shoreline, where the new beach ridges partially shelter areas behind them, fill will be excavated to appropriate elevations to form new high salt marsh. This area is proposed as a refuge for native salt marsh plant species diversity and recovery of rare plants. The exposure of dense, infertile rocky terrestrial soil to occasional wave scour would result in a relatively sparse, low, turf-like salt marsh vegetation types that typically support a high diversity of native plants, including rare salt marsh annuals such as Point Reyes bird's-beak.

The sheltered northwestern cove on the island has a pocket of salt marsh where bay mud settles, away from storm wave influence. This salt marsh, which supports more typical pickleweed and cordgrass vegetation, would be expanded by excavating surrounding upland soils, facilitating deposition of bay mud. Topsoil excavated from the southern end of the island during grassland and seasonal wetland enhancement activities may be deposited in this area to support productive salt marsh vegetation. Small tidal creeks would be excavated in resistant substrate to initiate tidal drainage patterns and marsh channel habitat structure for birds and fish.

Large woody debris structures (large tree trunks and branches) will be placed in random clusters along the high tide line of these new tidal marsh areas to offer high tide roosting habitat for shorebirds and other tidal marsh dependent avian species.

2.3.3 Sedge/rush meadow and seasonal wetland matrix

The central "upland" areas of the island would be mostly converted to a particular type of native grassland vegetation found along tidal marsh edges in alluvial, clayey soils in eastern Marin County. This area would consist of a mix of colonial, creeping, sod-forming perennial grasses, sedges, and rushes, that would form dense and continuous cover over years. Accomplishing this goal will involve a process of vegetation removal, substrate re-conditioning to remove existing non-native seed banks and enhance suitability for target species, and replanting with native species.

Seasonal pond and wetland complexes will be constructed within the sedge/rush meadow. Depressions will be excavated and the underlying substrate compacted to reduce drainage. These wetland complexes will support variable wetland vegetation, ranging from uncommon local types of vernal marsh (spikerush, meadow sedge) and vernal pool species (dominated by native annuals).

3.0 Project Phasing

The Aramburu Island Restoration and Enhancement Project will be broken into two phases, which will be funded under separate contracts. In this SEP, we are requesting

funds to complete Phase 1. We anticipate that funding for Phase 2 will be awarded in time so that both phases can be implemented simultaneously. However, should funding for Phase 2 be delayed, Phase 1 will still produce tangible environmental enhancement benefits in addition to completing the Conceptual Enhancement Plan and navigating the regulatory process.

3.1 Phase 1

The following tasks will be completed in Phase 1:

1. Perform a feasibility analysis for the proposed restoration and enhancement design
2. Create the Final Conceptual Enhancement Plan for the entire project
3. Complete CEQA analysis and obtain permits for the entire project
4. Complete the final design plans for bay beach and sand flat enhancement (see section 2.3.1 above)
5. Perform bay beach and sand flat enhancement activities

3.2 Phase 2

The following tasks will be completed in Phase 2:

1. Final design plans for tidal marsh, sedge/rush meadow, seasonal wetland enhancements (see sections 2.3.2 and 2.3.3 above)
2. Perform tidal marsh, sedge/rush meadow, and seasonal wetland enhancements
3. Post-construction habitat monitoring (3 years)

4.0 Project Budget

The budget detail is shown in Table 1. The total project budget, which in addition to all of the above mentioned restoration activities, includes final design, planning, permitting, oversight, and monitoring, is estimated to be **\$970,750**. We are requesting **\$200,000** to carry out Phase 1 of the project. By performing Phase 1, the SEP will produce tangible habitat restoration benefits with the initial sum of money.

5.0 Project Milestones

Project initiation shall begin within 40 days after approval of the project by the Regional Water Board or its Executive Officer. The project milestones and their anticipated dates of completion are as follows:

Phase 1:

- Complete feasibility analysis and Draft Conceptual Enhancement Plan for entire project: **Spring 2009 or within 3 months of project initiation**
- Complete Final Conceptual Enhancement Plan for entire project: **Summer 2009 or within six months of project initiation**

- Complete CEQA analysis: **Fall 2009 or within twelve months of project initiation**
- Submit permits: **Winter 2010 or within 12 months of project initiation**
- Complete the final design plans for bay beach and sand flat enhancement: **Spring 2010 or within 15 months of project initiation**
- Bay beach and sand flat enhancement construction*: **July – September 2010 or completion within 24 months of project initiation**
- Phase 1 final Project Report submitted by Audubon: **December 2010 or within or within 24 months of project initiation**

Phase 2:**

- Complete Phase 2 final design: **Spring 2010**
- Phase 2 construction*: **July – September 2010**
- Phase 2 final Project Report submitted by Audubon: **December 2010**
- Post-construction habitat monitoring: **December 2010 – January 2013**

* construction schedule accommodates avoidance windows for harbor seals and nesting birds

** timeline assumes that funding through RWQCB CAA program is secured in spring-summer 2009

6.0 Project Management and Oversight

Richardson Bay Audubon Center, a program of the National Audubon Society, will serve as Project Manager. Richardson Bay Audubon Center has retained the services of Wetlands and Water Resources Inc. to design the project and to assist with regulatory compliance.

To ensure completion of commitments and appropriate expenditure of funds, oversight and audit of the project will be conducted by the San Francisco Estuary Project. SASM would file a final report to the Regional Water Board and the oversight/audit entity identified below. The report shall describe the work completed under this project no later than one month after the completion of the portion of the project funded by this SEP.

All reports must be sent to the following:

Marc Holmes, Restoration Consultant
 San Francisco Estuary Project
 1515 Clay Street, Suite 1400
 Oakland, CA 94612
 (510) 622-2419

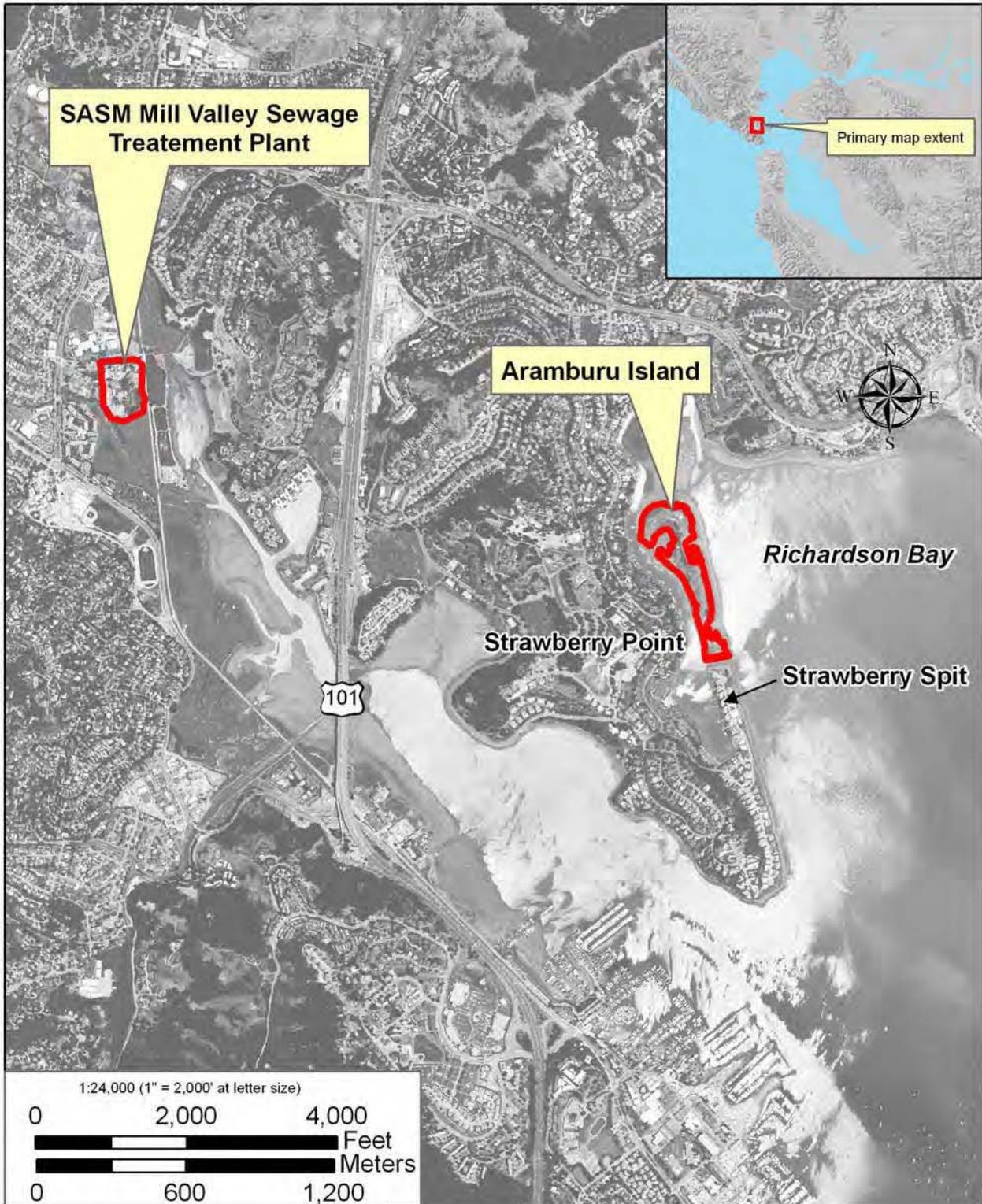
Tables and Figures

Table 1: Budget Summary

| Task | Total Budget | Budget Phasing | | Secured or Requested Funding | | | | Total secured or requested |
|--|----------------|----------------|----------------|------------------------------|---------------------------|-----------------|----------------|----------------------------|
| | | Phase 1 | Phase 2 | Request SEP | Request CU&A ¹ | Secured Bechtel | Secured Toyota | |
| Conceptual Planning and Design | | | | | | | | |
| 1 Data collection/analysis and planning | 35,000 | 35,000 | | | | 35,000 | | 35,000 |
| 2 Feasibility analysis and draft/final Conceptual Enhancement Plan | 31,000 | 31,000 | | 31,000 | | | | 31,000 |
| Permitting/environmental compliance Audubon Project Planning, Management, Implementation | 35,000 | 35,000 | | 35,000 | | | | 35,000 |
| Final Design for Phase 1 construction | 210,000 | 50,000 | 160,000 | | | | 50,000 | 210,000 |
| Final Design for Phase 2 construction | 9,000 | 9,000 | | 9,000 | | | | 9,000 |
| Construction, Phase 1 | 31,000 | | 31,000 | | 31,000 | | | 31,000 |
| 1 Bay beach and sand flat enhancement | | | | | | | | |
| Transport and deposit beach material | 90,000 | 90,000 | | 90,000 | | | | 90,000 |
| Construct beach micro groins | 10,000 | 10,000 | | 10,000 | | | | 10,000 |
| 2 Construction Monitoring | 5,000 | 5,000 | | 5,000 | | | | 5,000 |
| Construction, Phase 2 | | | | | | | | |
| 3 Earthwork | | | | | | | | |
| Equipment mobilization | 70,000 | | 70,000 | | 70,000 | | | 70,000 |
| Tidal marsh enhancement | 65,000 | | 65,000 | | 65,000 | | | 65,000 |
| Seasonal wetland creation | 20,000 | | 20,000 | | 20,000 | | | 20,000 |
| Grassland enhancement | 75,000 | | 75,000 | | 75,000 | | | 75,000 |
| 4 Woody debris placement | 10,000 | | 10,000 | | 10,000 | | | 10,000 |
| 5 Vegetation re-establishment | 20,000 | | 20,000 | | 20,000 | | | 20,000 |
| 6 Construction monitoring | 20,000 | | 20,000 | | 20,000 | | | 20,000 |
| Construction Contingency (35%) | 134,750 | | 134,750 | | 134,750 | | | 134,750 |
| Post-construction habitat monitoring (3 years) | 60,000 | | 60,000 | | 60,000 | | | 60,000 |
| Audubon Education/outreach programs | 20,000 | | 20,000 | | 20,000 | | | 20,000 |
| SFEP Oversight | 20,000 | 20,000 | | 20,000 | | | | 20,000 |
| Total project budget | 970,750 | 285,000 | 685,750 | 200,000 | 645,750 | 35,000 | 50,000 | 970,750 |

Notes

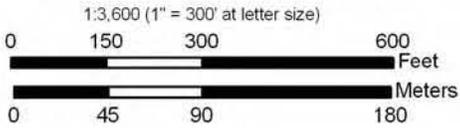
1) RWQCB Clean Up & Abatement



| | | | | |
|---|---|---|-----------------|--|
| <p>Data sources: Photo (NAIP, 2005) Produced by WWR, Feb 2009 Map file: vicinity-map_2009-0204dag.mxd</p> |  WETLANDS AND WATER RESOURCES | <p>VICINITY MAP</p> <p>Aramburu Island Enhancement Project Richardson Bay Audubon Sanctuary</p> | | |
| <p>February 2009</p> | | <p>Project 1145</p> | <p>Figure 1</p> | |



Channel cut in 1987



AERIAL PHOTOGRAPH

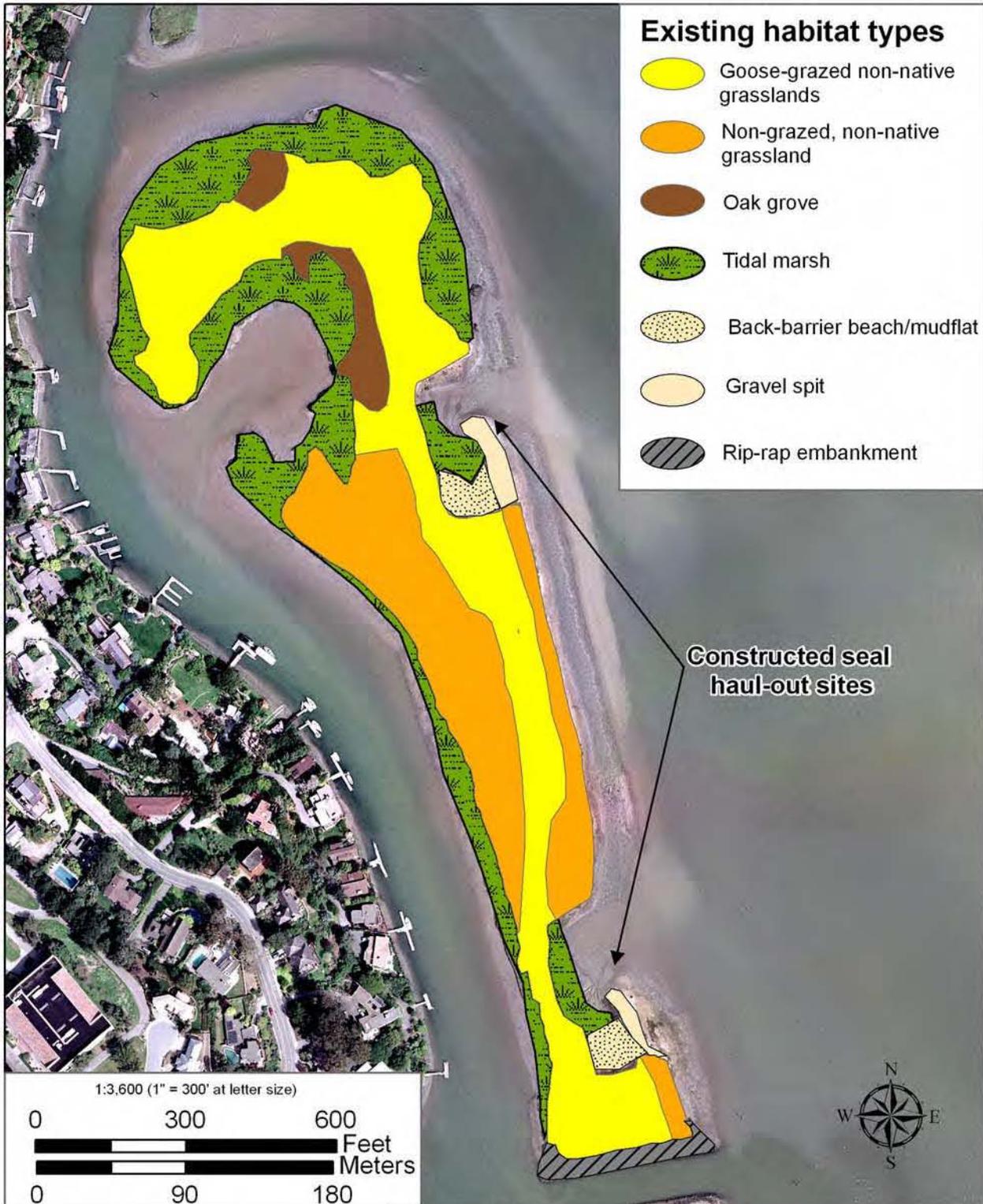
Aramburu Island Enhancement Project
Richardson Bay Audubon Sanctuary

Air photo source: Marin County (2004)
Map file: aramburu-air-photo_2009-0205dag.mxd

February 2009

Project No. 1145

Figure 2



Data sources: habitats (WWR, 2009);
Photo (Marin County, 2004)
Produced by WWR, Feb2009
Map file: current-habitats_2009-0205dag.mxd



EXISTING HABITAT TYPES

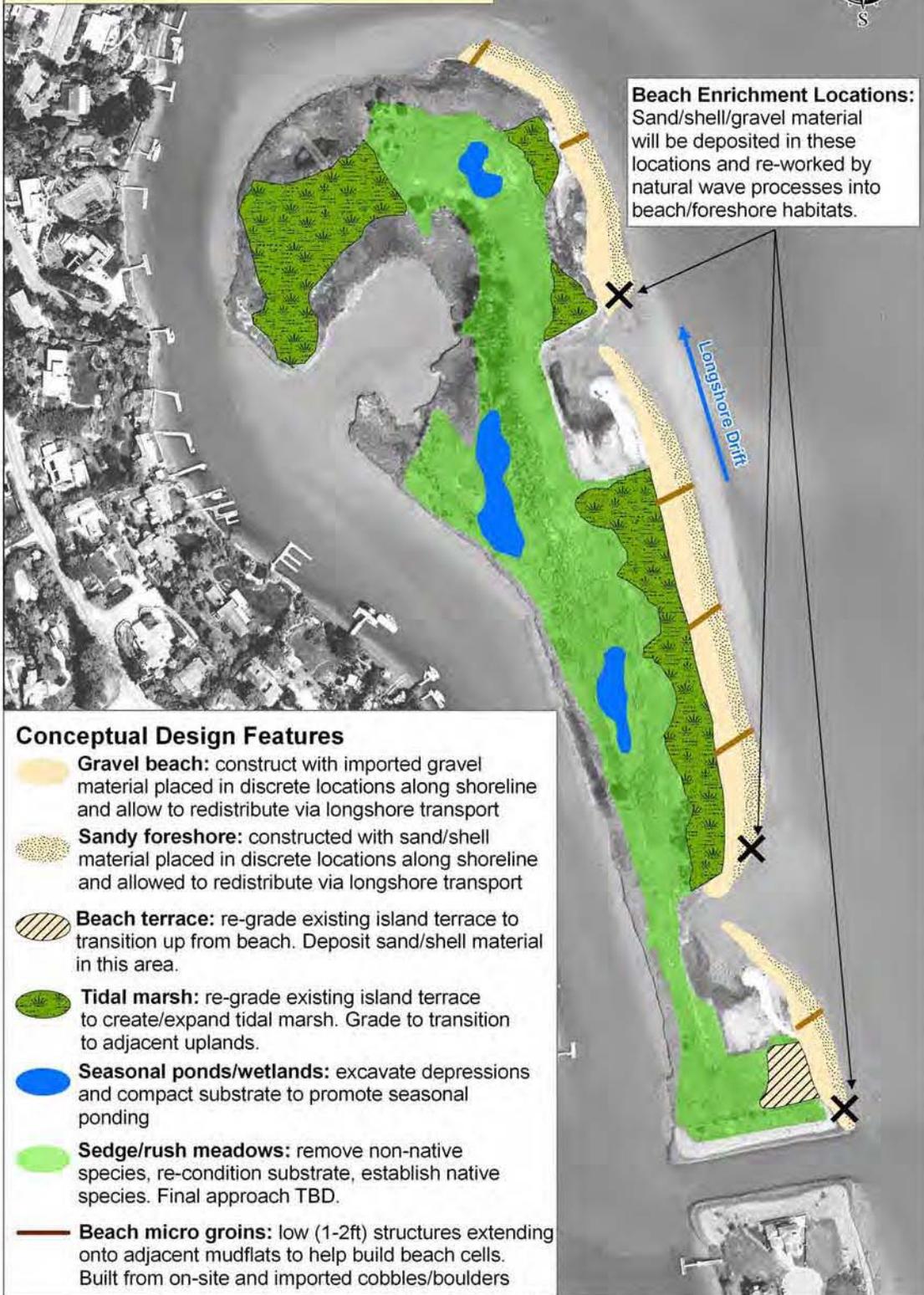
Aramburu Island Enhancement Project
Richardson Bay Audubon Sanctuary

February 2009

Project 1145

Figure 3

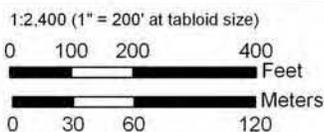
DRAFT: Location, quantity, and dimensions of all enhancement elements are subject to further revision



Beach Enrichment Locations:
Sand/shell/gravel material will be deposited in these locations and re-worked by natural wave processes into beach/foreshore habitats.

Conceptual Design Features

-  **Gravel beach:** construct with imported gravel material placed in discrete locations along shoreline and allow to redistribute via longshore transport
-  **Sandy foreshore:** constructed with sand/shell material placed in discrete locations along shoreline and allowed to redistribute via longshore transport
-  **Beach terrace:** re-grade existing island terrace to transition up from beach. Deposit sand/shell material in this area.
-  **Tidal marsh:** re-grade existing island terrace to create/expand tidal marsh. Grade to transition to adjacent uplands.
-  **Seasonal ponds/wetlands:** excavate depressions and compact substrate to promote seasonal ponding
-  **Sedge/rush meadows:** remove non-native species, re-condition substrate, establish native species. Final approach TBD.
-  **Beach micro groins:** low (1-2ft) structures extending onto adjacent mudflats to help build beach cells. Built from on-site and imported cobbles/boulders



PRELIMINARY CONCEPTUAL ENHANCEMENT DESIGN ELEMENTS

Aramburu Island
Richardson Bay Audubon Sanctuary

Air photo source: Marin County (2004)
Map file: aramburu-concept-design-draft_2009-0204dag.mxd

**Photographs of Existing and Proposed
Conditions**

Section 1: Existing Site Conditions



Photo 1: heavily goose-grazed grasslands (photo by Dan Gillenwater, 1/12/2009)



Photo 2: non-grazed grasslands (photo by Christina Toms, 1/29/2009)



Photo 3: oak grove at north end of island (photo by Dan Gillenwater, 1/12/2009)



Photo 4: wave-cut, erosional eastern shoreline (photo by Peter Baye, 1/12/2009)



Photo 5: gravel point-bar and back barrier tidal marsh (photo by Peter Baye, 1/12/2009)

Section 2: Reference Sites for Proposed Conditions



Photo 6: small barrier beach composed of coarse-grained shell fragments and gravels eroded from artificial fill sources along the Bayshore Freeway. Location: Brisbane/Candlestick spit, San Mateo County. (photo by Peter Baye)



Photo 7: eroded, compacted, wave-scoured upland fill in the high tide line, exposing rubble and gravel embedded in heavy sandy clay, supports sparse pickleweed and abundant salt marsh bird's-beak. Location: Pohono St. Marsh, North Sausalito, Marin County. (photo by Peter Baye)



Photo 8: meadow sedge forms pure stands that grade down to tidal marsh edges of Point Pinole. One large colony has spontaneously established at Arumburu Island, indicating high feasibility of active establishment. Location: Point Pinole, Contra Costa County. (photo by Peter Baye)



Photo 9: seasonally flooded shallow pools form in depressions in consolidated, desalinized Bay Mud. Dabbling ducks, shorebirds, and egrets forage in them during flood periods when they produce many prey items, including tree frogs tadpoles, and other aquatic invertebrates. Location: Bahia wetlands, Novato. (photo by Peter Baye)



Photo 10: heron perched on large woody debris in tidal marsh. Location: Pickleweed Island (adjacent to Aramburu Island).
(photo by Peter Baye)

Attachment C

ATTACHMENT C: Spill Table (January 1, 2001 through September 30, 2008)

Sewerage Agency Of Southern Marin
 ACL Complaint No. R2-2008-0070
 Treatment Plant/Sewer Overflows

| No. | Date | Location | Gallons Discharged | Gallons Recovered | Overflow Destination | Cause |
|----------------------|---------------|---|--------------------|-------------------|--------------------------------|--|
| 1 | 12/27/04 | Miller Ave. Mill Valley MH # AR6 | 6,000 | 0 | Pickleweed Inlet | Extreme weather conditions/I&I and incomplete cleaning project (contractor's equipment failed) |
| 2 | 12/27/04 | Almonte Blvd & Wisteria Lane, Mill Valley MH# A11 | 1,200 | 0 | Pickleweed Inlet | Extreme weather conditions/I&I and incomplete cleaning project (contractor's equipment failed) |
| 3 | 12/27/04 | Almonte Blvd north of Shoreline Highway MH #A24 | 600 | 0 | Pickleweed Inlet | Extreme weather conditions/I&I and incomplete cleaning project (contractor's equipment failed) |
| 4 | 12/30-31/2005 | Equalization Pond | 1,400,000 | 0 | Pickleweed Inlet | Extreme weather conditions. A state of emergency was declared in Marin County due to wide spread flooding. |
| 5 | 1/25/2008 | Equalization Pond | 2,450,000 | 0 | Pickleweed Inlet | Large winter storm. |
| 6 | 1/31/2008 | Wastewater Treatment Plant | 961,000 | 500 | Some captured on paved surface | Storm/inadequate number of pumps functioning to handle flows/alarm error. |
| Total Gallons | | | 4,818,800 | 500 | | |



California Regional Water Quality Control Board

Santa Ana Region



C. Lloyd, Ph.D.
Agency Secretary

3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (951) 782-4130 - FAX (951) 781-6288
<http://www.waterboards.ca.gov/santaana>

Arnold Schwarzenegger
Governor

January 13, 2005

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Brad Robbins, General Manager
Department of Water and Power
City of Corona
730 Corporation Yard Way
Corona, California 92880

ADMINISTRATIVE CIVIL LIABILITY - COMPLAINT NO. R8-2004-0114

Dear Mr. Robbins:

Enclosed is a revised copy of Administrative Civil Liability Complaint No. R8-2004-0114. This complaint alleges that the City of Corona violated California Water Code Section 13376 when, between approximately September 7, 2004 and September 14, 2004, the City of Corona's 24" pipeline which transmits non-disinfected secondary effluent ruptured and released 10.65 million gallons of wastewater into Temescal Creek.

The Complaint has been revised based on new information that you provided regarding the spill during our meeting on January 12, 2005. I am now proposing that a civil liability of \$50,000 be assessed.

Should you choose to waive your right to a hearing in this matter, please sign the enclosed waiver form and submit it prior to January 28, 2005, with the enclosed invoice a cashier's check or money order for the proposed amount of civil liability (\$50,000) to the address on the invoice.

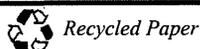
If you have any questions, please call me at (951) 782-3284 or Gary Stewart of my staff at (951) 782-4379

Sincerely,

Gerard J. Thibeault
Executive Officer

Enclosed: Revised Complaint No. R8-2004-0114

California Environmental Protection Agency



Brad Robbins

- 2 -

January 13, 2005

cc: w/enclosures

Regional Board
State Water Resources Control Board, Office of the Chief Counsel – Jorge Leon
U. S. Environmental Protection Agency, Region IX

gds/corona spill acl ltr2

California Environmental Protection Agency



Recycled Paper



State Water Resources Control Board



Terry Tamminen
Secretary for
Environmental
Protection

The energy challenge facing California is real.
Every Californian needs to take immediate action to reduce energy consumption.
For a list of simple ways you can reduce demand and cut your energy costs, see our website at <http://www.swrcb.ca.gov>

Arnold
Schwarzenegger
Governor

To:
CORONA, CITY OF
P.O. BOX 940
CORONA, CA 92878-0940

Invoice No: 55444
Invoice Date: 01/13/2005
Enforcement Action ID: 97668
Enforcement Order No: R8-2004-0114

INVOICE

ACLCOMP

| Milestone ID | Description | Amount | Due Date |
|-------------------------|------------------|--------------------|----------|
| 64797 | LIABILITY AMOUNT | \$50,000.00 | |
| TOTAL AMOUNT DUE | | \$50,000.00 | |

California Environmental Protection Agency



Retain above portion for your records
Please return bottom portion with your payment

CORONA, CITY OF
P.O. BOX 940
CORONA, CA 92878-0940

| Milestone ID | Description | Amount | Due Date |
|-------------------------|-------------|--------------------|----------|
| 64797 | LIABDUE | \$50,000.00 | |
| TOTAL AMOUNT DUE | | \$50,000.00 | |

Make your check payable to:
State Water Resources Control Board

Mail payment to:
**SWRCB ACCOUNTING
ATTN: ENFORCEMENT
P. O. Box 100
SACRAMENTO, CA 95812-0100**

Amount Enclosed: \$ _____

PLEASE PRINT THE FOLLOWING INVOICE NUMBER ON YOUR CHECK: **55444**

Invoice Date: 01/13/2005
Enforcement Action ID: 97668
Enforcement Order No.: R8-2004-0114

California Regional Water Quality Control Board
Santa Ana Region

IN THE MATTER OF:

| | | |
|----------------------------------|---|--------------------------------|
| City of Corona |) | |
| Department of Water and Power |) | Complaint No. R8-2004-0114 |
| Water Pollution Control Division |) | for |
| 730 Corporation Yard Way |) | Administrative Civil Liability |
| Corona, California 92880 |) | |

YOU ARE HEREBY GIVEN NOTICE THAT:

1. The City of Corona is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose administrative civil liability pursuant to California Water Code Section 13385.
2. A hearing concerning this complaint will be held before the Board within 90 days of the date of issuance of this complaint, unless the City of Corona waives its right to a hearing. Waiver procedures are specified in Paragraph 9 of this complaint. If the hearing on this matter is not waived, the hearing will be held during the Board's regular meeting on February 3, 2005 in the Santa Ana City Council Chambers. The City of Corona or its representative will have the opportunity to appear and be heard and to contest the allegations in this complaint and the imposition of civil liability by the Board.
3. If the February 3, 2005 hearing on this matter is held, the Board will consider whether to affirm, reject, or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. The City of Corona is alleged to have violated California Water Code Section 13376 by allowing or causing waste to be discharged to waters of the United States without a permit.
5. This complaint is based on the following facts:
 - A.) The City of Corona owns and operates a 24" pipeline that transmits non-disinfected secondary effluent from Wastewater Treatment Plant #1A to the percolation ponds at Lincoln Avenue and Cota Street. This steel pipeline was built in 1968, and is lined with mortar and coated with an asphalt coating.

- B.) This line carries around 6.5 million gallons per day of non-disinfected secondary effluent at an average of 5,000 gallons per minute, and it has a pressure of approximately 13 to 14 psi.
 - C.) On September 14, 2004 City of Corona personnel noticed wastewater discharging from a rupture in the line. The exact date and time the discharge began is unknown. However, a pressure graph of this line indicates that on September 7, 2004, between 11 a.m. and 12:30 p.m. pressure started to drop in the line. This may indicate the time the discharge began. The rupture size was a 6" by 3" hole and was caused by corrosion.
 - D.) The rupture caused the release of approximately 8.17 million gallons of non-disinfected secondary effluent. None of the spill was contained or recovered and it discharged to the Butterfield Drain, which merges with Temescal Creek at a critical habitat area of the Least Bell's Vireo.
 - E.) On September 15, 2004, the pipeline was repaired and restored to normal operation.
 - F.) This is not the first incident of a rupture along this area of the pipeline. On January 12, 2003 this same pipeline ruptured approximately 150 to 200 feet away. During this previous incident, 750,000 gallons of secondary non-disinfected effluent leaked from a 13" by 1.25" wide opening in the pipe.
6. Both spills occurred from a wastewater conveyance facility owned and operated by the City of Corona. The City of Corona does not have a permit to discharge waste from this system to waters of the United States. The City of Corona is thus liable for unauthorized discharges of wastes from this system in violation of Water Code Section 13376.
7. Pursuant to Section 13385(c), the Board can administratively assess civil liability in an amount not to exceed the sum of the following:
- A.) Ten thousand dollars (\$10,000) for each day in which the violation occurs, and
 - B.) Where there is a discharge, any portion which is not susceptible to clean up or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) times the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

7. In accordance with Water Code Section 13385(c), the maximum liability for the violation cited is \$82,500,000. This liability has been calculated as follows:
- A) \$80,000 for 8 days of discharge @ \$10,000 per day, plus
 - B) \$81,700,000 for \$10 per gallon for each gallon over 1,000 gallons discharged (8.17 MG – 1,000 gal x \$ 10/gal).
8. Section 13385 (e) specifies factors that the Board shall consider in establishing the amount of civil liability. After consideration of these factors, the Executive Officer proposes civil liability be imposed on the City of Corona in the amount of \$50,000 dollars for the violation cited above.
9. The City of Corona may waive its right to a hearing in this matter. If the City of Corona waives its right to a hearing, sign the waiver, which is page 4 of this Complaint, and return it, together with a check payable to the State Water Resources Control Board, in the amount of \$50,000.

If you have any questions concerning this complaint, contact the undersigned at (951)782-3284, Gary Stewart, Surveillance and Enforcement Section Chief at (951)782-4379 or Jorge Leon, the Board's staff counsel, at (916)341-5180.

1-13-05
Date


Gerard J. Thibeault
Executive Officer

California Regional Water Quality Control Board
Santa Ana Region

IN THE MATTER OF:

| | | |
|----------------------------------|---|--------------------------------|
| City of Corona |) | |
| Department of Water and Power |) | |
| Water Pollution Control Division |) | Complaint No. R8-2004-0114 |
| 730 Corporation Yard Way |) | for |
| Corona, California 92880 |) | Administrative Civil Liability |

Waiver of Hearing

The City of Corona agrees to waive its right to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violation alleged in Complaint No. R8-2004-0114. The City of Corona has enclosed a check payable to the State Water Resources Control Board in the amount of the proposed liability in paragraph 9 of complaint No. R8-2004-0114. The City of Corona understands that it is giving up its right to be heard and to argue against the allegations made in Complaint No. R8-2004-0114, and against the imposition of, and amount of, civil liability.

Date

for the City of Corona

State of California
California Regional Water Quality Control Board
Santa Ana Region

IN THE MATTER OF:

| | | |
|--|---|--------------------------------|
| Orange County Sanitation District |) | Complaint No. R8-2008-0054 |
| 10844 Ellis Avenue |) | for |
| P.O. Box 8127 |) | Administrative Civil Liability |
| Fountain Valley, California 92708-8127 |) | (First Issued: May 16, 2008) |
| |) | (Amended: June 18, 2008) |
| <u>Attn: Dr. Robert Ghirelli</u> |) | |

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Orange County Sanitation District (OCSD) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Regional Board), may impose administrative civil liability pursuant to California Water Code Section 13385.
2. A hearing concerning this complaint will be held before the Regional Board within 90 days of the date of issuance of this complaint, unless OCSD waives its right to a hearing. Waiver procedures are specified on Page 7 of this complaint. If the hearing on this matter is not waived, the hearing will be held during the Board's regular meeting on July 18, 2008 at the City Council Chambers, 25541 Barton Road, Loma Linda, California. The meeting begins at 9:00 a.m. OCSD or its representative will have the opportunity to appear and be heard and to contest the allegations in this complaint and the imposition of civil liability by the Regional Board. An agenda announcement for the meeting and the staff report pertaining to this item will be mailed to you not less than 10 days prior to the hearing date.
3. If the July 18, 2008 hearing is held on this matter, the Regional Board will consider whether to affirm, reject, or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. This complaint pertains to an unauthorized discharge of approximately 28 million gallons of a mixture of primary and secondary treated wastewater from OCSD's treatment facilities during 2006. At the time of the incident, discharges from OCSD's wastewater treatment plants to the Pacific Ocean were regulated under waste discharge requirements, Order No. 98-5 (NPDES No. CA 0110604), jointly issued by the United States Environmental Protection Agency (USEPA) and the Regional Board on March 6, 1998.

5. OCSD is alleged to have violated Discharge Specification A. 2. of Order No. 98-5. On April 29, 2006, OCSD discharged approximately 28 million gallons of a mixture of primary and secondary treated and disinfected effluent through its emergency outfall, Discharge Serial No. 002, into the Pacific Ocean. Discharge Specification A.2 states:

“The discharge of wastewater to other than Discharge Serial No. 001 is prohibited, except in the event of an emergency. An emergency is a circumstance that precludes discharging all wastewater to Discharge Serial No. 001 despite proper operations and maintenance of the discharger’s facilities. Such emergencies are limited to situations such as earthquake, flood, and acts of war or terrorism. In the event of an emergency, the discharger may discharge other than as required by the terms of this permit provided:

- a) The Executive Officer and the Director are notified of the pending discharge as soon as possible,
- b) The Executive Officer and the Director agree that an emergency exists,
- c) The discharger takes all steps required by the Executive Officer and the Director to minimize any harm resulting from the discharge,
- d) Discharges through Discharge Serial No. 002 (deactivated ocean outfall) will be maximized before wastewater is discharged through Discharge Serial No. 003 (overflow point to the Santa Ana River), and
- e) The discharger returns the discharge to compliance with the terms of this permit without delay.”

6. This complaint is based on the following facts:

- A.) OCSD owns and operates a publicly owned treatment works (POTW) that includes a wastewater collection system and treatment and disposal facilities. The treatment facilities handle wastewaters from twenty-one cities and unincorporated areas of northern and central Orange County. The facilities also receive brine wastes, sewage, and other wastes from the western areas of San Bernardino and Riverside Counties through the Santa Ana Regional Interceptor.
- B.) OCSD operates Reclamation Plant No. 1 (RP-1), with a primary treatment design capacity of 108 million gallons per day (MGD) and 96 MGD of

secondary treatment capacity, and Treatment Plant No. 2 (TP-2) with primary treatment design capacity of 168 MGD and 90 MGD of secondary treatment capacity. The OCSD's final effluent is a blend of approximately 50% primary treated wastewater and 50% secondary treated wastewater.

- C.) The treated effluent from RP-1 is then blended with TP-2 effluent for eventual disposal into the Pacific Ocean. Under normal circumstances OCSD discharges its entire effluent through Discharge Serial (DS) No. 001. This is a 120-inch diameter underwater pipeline that extends approximately 4.5 miles offshore from the mouth of the Santa Ana River, located in Huntington Beach. As indicated above, Discharge Specification A.2 provides that OCSD may discharge to the Pacific Ocean on an emergency basis through DS No. 002, a deactivated ocean outfall, which is a 78-inch diameter underwater pipeline that extends 1 mile offshore from the mouth of the Santa Ana River, at a depth of 65 feet. In case of an extreme emergency, OCSD may also discharge effluent into the Santa Ana River through DS No. 003 located immediately upstream from the mouth of the Santa Ana River. Emergencies are limited to situations such as earthquake, flood, and acts of war or terrorism. Prior to any emergency discharge, OCSD is required to notify USEPA and the Executive Officer and obtain their concurrence that an emergency exists.
- D.) OCSD scheduled to replace a corroded air relief valve/blind flange assembly (valve assembly) on the 120-inch diameter pipeline that carried the blended effluent from RP-1 and TP-2 to DS No. 001. The blended effluent consists of approximately 50% primary and 50% secondary treated wastewater that are disinfected. The valve assembly is located within a vault. OCSD scheduled to shut down the pipeline during low flow and low tide on April 29, 2006, and then replace the valve assembly. Regional Board staff and County Health officials were notified of the planned shutdown. OCSD proposed to temporarily store the effluent at its storage facility during this shutdown. The contingency plan for the valve assembly replacement included the use of the 78-inch outfall, DS No. 002, only as a last resort. However, OCSD did not seek authorization from the USEPA and the Executive Officer for emergency use of DS No. 002.
- E.) On April 29, 2006 at 3:00 a.m., OCSD started the work to replace the valve assembly by shutting down the effluent pumps and using onsite storage for the effluent. At 6:00 a.m., the work was completed and the effluent pumps were activated. Shortly thereafter, at 6:40 a.m., the gasket between the new valve assembly and the flange burst, resulting in approximately 100 gallons of leakage of the effluent into the vault. Approximately 50 gallons of the leaked effluent were recovered. Once again, the effluent pumps were shut down and the effluent was directed to

the onsite storage facility.

- F.) An evaluation of the situation by OCSD staff determined that the leak from the valve was too great to follow the planned contingency of continuing use of DS No. 001 while vector trucks and bypass pumping returned leaked flow from the vault to TP-2. A decision was made by OCSD staff to replace the damaged gasket during the morning on April 29, 2006 and to pump the effluent during this time into the 78-inch outfall. This resulted in the discharge of 28 million gallons of wastewater to the Pacific Ocean, approximately one mile offshore from the mouth of the Santa Ana River and at a depth of 65 feet, over a period of approximately 6 hours. The quality of the discharge was the same as that which would have been discharged through DS No. 001. Regional Board staff and County Health Officials were notified 30 minutes after the discharge was initiated. This discharge was not due to an "emergency" as described in Discharge Specification A.2, and neither the Executive Officer nor the USEPA agreed that it was an emergency discharge. The discharge was in violation of Discharge Specification A.2 of Order No. 98-05.
- G.) As a precautionary measure, the Orange County Health Care Agency closed approximately a five mile stretch of beach in Huntington Beach and Newport Beach. California State Parks officials reported later that at least 300 (300 to 500) swimmers were ordered out of water from Huntington State Beach alone at approximately 10:00 a.m. on April 29, 2006. Huntington Bike Trail also had to be closed due to the spill. The beaches were closed for 48 hours on a warm weekend when many people were likely to visit the beach. The unauthorized discharges from OCSD impacted the beneficial uses of waters of the State and the US.
- H.) A Regional Board staff investigation determined that the unauthorized discharge on April 29, 2006 was likely caused by:
1. A lack of preventive maintenance: All indications are that the valve assembly was installed around 1966. There was a significant amount of corrosion, including pitted contact surfaces, indicating a lack of preventive maintenance.
 2. Not following industry accepted installation procedures: During the first installation, it appears that the pitted contact surfaces were not properly prepared. There was some indication that the flanges were not properly aligned and tightened. During the second installation, the irregular contact surfaces were resurfaced, a proper sealant was applied, proper gaskets were installed, and the flanges were tightened as per accepted industry practice.

3. Not taking appropriate precautions to minimize water hammer: It appears that proper precautionary measures were not taken during the start up of the pumps after the first installation. This might have contributed to the failure of the newly installed valve assembly.

4. Lack of contingency plans: OCSD did not have vector trucks or other equipment available at the project site that were capable of handling large spills or leaks during the valve assembly replacement. OCSD staff could not locate an electrical technician in a timely manner who was knowledgeable about bypassing the limit switch to fully close the isolation valve.

It appears that human errors and a lack of proper contingency planning created a situation that necessitated the unauthorized use of DS No. 002 for the discharge.

7. OCSD violated the federal Clean Water Act, the California Water Code and the Waste Discharge Requirements by discharging effluent through DS No. 002 without prior approval of the Executive Officer and the USEPA. Section 13385(a)(2) of CWC provides that any person who violates Waste Discharge Requirements issued pursuant to the federal Clean Water Act shall be civilly liable. Section 13385(c)(1) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs. Section 13385(c)(2) provides for an additional liability not to exceed \$10/gallon, excluding the first 1,000 gallons.

8. Based on the violations cited above, OCSD is alleged to have violated its Waste Discharge Requirements for one day and discharged 28 million gallons of wastewater through DS 002 without authorization. The maximum liability for these violations is \$280,000,000.

a. \$10,000 for one day of discharge; and

b. \$279,990,000 at \$10 per gallon for each gallon over 1,000 gallons discharged but not cleaned up.

8. CWC §13385(e) specifies factors that the Regional Board shall consider in establishing the amount of civil liability. These factors include: nature, circumstances, extent, and gravity of the violation, and, with respect to the discharger, the ability to pay, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from

the acts that constitute the violation. These factors are evaluated in the following table:

| Factor | Comment |
|--|---|
| A. Nature, Circumstance, Extent, and Gravity of Violation | <p>OCSD is alleged to have violated Discharge Specification A. 2. of Order No.98-5, by discharging approximately 28 million gallons of treated and disinfected wastewater through the deactivated Discharge Serial No. 002 on April 29, 2006. In response to this unauthorized discharge, County Health Care Agency closed an approximately five mile stretch of Huntington and Newport Beaches from April 29 to May 1, 2006 thereby impacting the beneficial uses. This happened during a failed attempt by OCSD to replace an air valve/blind flange assembly. Board staff contends that lack of proper planning, lack of contingency measures, and technical and human errors were major causes for this unauthorized discharge.</p> <p>In calculating the penalty assessment based on gallons discharged, the Assistant Executive Officer considered the fact that the quality of the discharge was within the discharge limits specified in the Waste Discharge Requirements (for discharges to Discharge Serial No. 001) and the fact that the alleged violation was caused by an unanticipated series of events.</p> |
| B. Culpability | <p>Staff believes that OCSD could have avoided this discharge through proper planning and by following industry established procedures for valve replacement. The discharge occurred from facilities owned and operated by OCSD, and OCSD is strictly liable for the unauthorized discharge of wastes from these facilities.</p> |
| C. Economic Benefit or Savings | <p>OCSD saved money by not replacing the air valve/flange assembly in a timely manner and by not maintaining them on a regular basis. OCSD has provided information that estimates a cost savings of \$130,000 for the unperformed maintenance activities.</p> |
| D. Prior History of Violations | <p>OCSD is a sewage collection and treatment agency for 21 cities and a large portion of the unincorporated areas of Orange County. There have been a number of spills and leaks of raw sewage from the collection systems and spills of the treated effluent to unauthorized locations.</p> |
| E. Other Factors | <p>Staff spent approximately 125 hours investigating this</p> |

incident and the total staff cost for this investigation is approximately \$13,875.

F. Ability to pay The discharger has not provided any information to indicate that it is unable to pay the proposed assessment.

9. After consideration of these factors, the Assistant Executive Officer proposes that a civil liability of \$ 263,875 be imposed on OCSD for the violations cited above. This is calculated as follows:

- a. \$120,000 penalty;
- b. \$13,875 in staff costs; and
- c. \$130,000 in economic savings

10. OCSD has indicated that it wishes to waive its right to a hearing and participate in a supplemental environmental project (SEP). OCSD may contribute up to \$120,000 towards a SEP project provided that OCSD submits a SEP proposal for review and approval by the Executive Officer within 60 days of issuance of this amended Complaint.

11. If OCSD wishes to waive its right to a hearing and participate in a SEP, please sign the attached waiver form, which is Page 8 of this Complaint, and return it, together with a check payable to the State Water Resources Control Board in the amount of \$ 143,875. Send the check and the signed waiver form to:

Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3348
Attention: Stephen D. Mayville

If you have any questions concerning this complaint, please contact Stephen D. Mayville at (951) 782-4992 or Julio Lara at (951) 782-4901. All legal questions should be directed to Reed Sato at (916) 341-5889.

6/18/08
Date

Kurt V. Berchtold
Kurt V. Berchtold
Assistant Executive Officer

State of California
California Regional Water Quality Control Board
Santa Ana Region

IN THE MATTER OF:

| | | |
|--|---|--------------------------------|
| Orange County Sanitation District |) | Complaint No. R8-2008-54 |
| 10844 Ellis Avenue |) | for |
| P.O. Box 8127 |) | Administrative Civil Liability |
| Fountain Valley, California 92708-8127 |) | (First issued: May 16, 2008) |
| |) | (Amended: June 18, 2008) |
| <u>Attn: Dr. Robert Ghirelli</u> |) | |

Waiver of Hearing

On behalf of Orange County Sanitation District, I agree to waive its right to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2008-0054. I am enclosing a check for \$143,875 made payable to the State Water Resources Control Board. On behalf of OCSD, I agree to submit a proposal for a Supplemental Environmental Project (SEP) for the balance of the assessed amount within 60 days from the date of the amended Complaint. The SEP proposal shall be subject to approval of the Executive Officer. I understand that I am giving up the right of Orange County Sanitation District to be heard and to argue against the allegations made by the Assistant Executive Officer in Complaint No. R8-2008-0054, and against the imposition of, and amount of, civil liability.

Date

for Orange County Sanitation District

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

ORDER NO. 2001-174

**ADMINISTRATIVE ASSESSMENT OF CIVIL LIABILITY
AGAINST
THE CITY OF SAN DIEGO
TECOLOTE CANYON SEWAGE SPILL TO MISSION BAY**

The San Diego Regional Water Quality Control Board, (hereinafter SDRWQCB), having held a public hearing on June 13, 2001, to hear evidence and comments on the allegations contained in Complaint No. 2001-99, dated April 19, 2001, and on the recommendation for administrative assessment of Civil Liability in the amount of \$1,589,000 finds as follows:

1. Between at least February 19 and February 28, 2001 the City of San Diego discharged 1,500,000 gallons of sewage upstream of the Point Loma Wastewater Treatment Plant to Tecolote Creek, a tributary to Mission Bay. The spill caused pollution and nuisance conditions in Tecolote Creek and Mission Bay.
2. The City negligently failed to detect the spill until February 28, 2001. The undetected spill resulted in a public health risk to recreational users of the affected receiving waters because there were no warnings of pollution posted.
3. The sewage spill occurred as a result of the City's negligent failure to provide proper preventive maintenance to its sewage collection system.
4. The sewage spill lasted for nine days because the City failed to properly handle a telephone report of the spill on February 19, 2001.
5. The sewage spill lasted for an additional six days because the City knowingly failed to conduct a patrol of the remote canyon scheduled for February 23, 2001. The City's failure to conduct the canyon patrol was in knowing violation of Order No. 91-68 (based on the City's stipulation that it would patrol all canyons with sewer lines after significant rainfall events as a result of the City's past history of undetected sewage spills in canyons).
6. Prohibition A.1 of Order No. 96-04, *General Waste Discharge Requirements Prohibiting Sanitary Sewer Overflows by Sewering Agencies* states that the discharge of sewage from a sanitary sewer system from any point upstream of a wastewater treatment plant is prohibited.
7. Consideration of the factors required by California Water Code 13385, as addressed in *Technical Analysis, Proposed Administrative Civil Liability*

Contained in Complaint No. 2001-99, City of San Diego, Tecolote Canyon Sewage Spill to Mission Bay, Noncompliance with Order No. 96-04, General Waste Discharge Requirements Prohibiting Sanitary Sewer Overflows by Sewage Collection Agencies, April 19, 2001, supports the assessment of civil liability in the amount of \$1,589,000 based on \$1.00 per gallon for 1,499,000 gallons discharged but not cleaned up (1,500,000 minus the first 1,000 gallons discharged) and \$10,000 per day for nine days.

8. The SDRWQCB incurred costs totaling \$20,080 which includes field investigations, preparation of enforcement documents, preparation for and attendance at meetings, supplemental environmental project review and ranking, and public hearings.
9. The “Mission Bay Human Pathogenic Viruses and Epidemiology Combined Study (Epidemiology Study Contribution)” described in Supplemental Environmental Project (SEP) Application Form, dated July 23, 2001 and revised on September 4, 2001 (Appendix A), for this project will provide useful information regarding water contact and human illness in Mission Bay, which cannot be obtained through traditional bacteriological sampling. This project rated high when compared to similar projects contained in the Supplemental Environmental Project Library.
10. The “Mission Bay Contaminant Dispersion Study” described in Supplemental Environmental Project (SEP) Application Form, dated August 9, 2001 and revised on September 26, 2001 (Appendix B), will provide useful information regarding the movement of contaminants within the eastern portion of Mission Bay to better link contamination events to specific sources. This project rated high when compared to similar projects contained in the Supplemental Environmental Project Library.
11. This enforcement action is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Division 13, Chapter 3, Section 21000 et seq.) in accordance with Section 15308 of the CEQA Guidelines in Title 14 of the California Code of Regulations to ensure the protection of the environment.

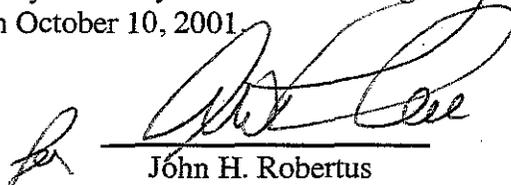
IT IS HEREBY ORDERED that civil liability is imposed on the City of San Diego in the amount of one million five hundred eighty nine thousand dollars (\$1,589,000) of which four hundred eighty nine thousand dollars (\$489,000) is payable immediately to the State Water Resources Control Board for deposit into the State Water Pollution Cleanup and Abatement Account.

1. The remaining portion of the civil liability, one million one hundred thousand dollars (\$1,100,000) shall be suspended upon successful completion of the following:

- a. The City of San Diego shall, by November 9, 2001, submit to the Regional Board proof of payment to the Southern California Coastal Water Research Project (SCCWRP) in the amount of \$700,000 for completion the Mission Bay Epidemiology Study.
 - b. The City of San Diego shall, by November 9, 2001, deposit \$400,000 into a secure interest bearing account yielding a competitive interest rate, with a financial institution acceptable to the Regional Board. The escrow account shall name the City of San Diego and the California Regional Water Quality Control Board, San Diego Region as parties. The purpose of the escrow account is to hold funds to be disbursed to a contractor, acceptable to the Regional Board, for completion of the Mission Bay Contaminant Dispersion Study. The Executive Officer of the Regional Board and the Assistant Executive Officer shall be agents of the Regional Board to authorize payments from the account to the contractor. The escrow agreement shall specify that no payments shall be made from the account unless authorized in writing by the agents of the Regional Board. In addition to the \$400,000 deposited in escrow, the City of San Diego shall pay all fees associated with the establishment and maintenance of the escrow account. All interest earned on the monies deposited into the account shall be returned to the State Water Resources Control Board for deposit into the State Water Pollution Cleanup and Abatement Account upon completion of the Mission Bay Contaminant Dispersion Study.
 - c. All projects must be completed by the completion date in Table A. Failure to complete a project, or late or inadequate completion of a project as described in Appendix A and B or this Order, will result in the total project cost becoming due and payable, to the State Water Pollution Cleanup and Abatement Account.
2. Minor modifications to the scope of work contained in each supplemental environmental project shall be approved by the Regional Board upon written request. Completion dates cannot be changed.
 3. The City of San Diego must submit written verification that each project or project subtask has been completed and an exact accounting of monies spent on each project to the Regional Board within 30 days of completion of the project or subtask. If, upon completion of each project, the total project cost of each project as described in Table A is not expended, the remainder of the monies allocated for that project shall be paid to the State Water Pollution Cleanup and Abatement Account.

4. Every public or published mention or reference by the City of San Diego, its officials, or its employees, to the above projects, whether written or oral, regardless of medium, shall include a clear and prominent statement that the project is undertaken or funded by the City of San Diego in order to satisfy the conditions for suspension of a portion of the civil liability assessed against the City of San Diego for violation of an order of the SDRWQCB pursuant to Administrative Civil Liability Order No. 2001-174 of the SDRWQCB.

I John H. Robertus, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order imposing civil liability issued by the California Regional Water Quality Control Board, San Diego Region on October 10, 2001.



John H. Robertus
Executive Officer

Table A
Supplemental Environmental Projects

| Project Name | Project Description | Total Project Cost | Start Date | Completion Date | Project Trustee |
|--|----------------------------|---------------------------|-------------------|------------------------|------------------------|
| Mission Bay Pathogenic Viruses and Epidemiology Combined Study (Epidemiology Study Contribution) | See Appendix A | \$700,000 | April 1, 2002 | December 31, 2004 | City of San Diego |
| Mission Bay Contaminant Dispersion Study | See Appendix B | \$400,000 | October 10, 2001 | May 1, 2003 | City of San Diego |

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

**ORDER NO. R9-2008-0020
IN SETTLEMENT OF
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R9-2007-0101
ISSUED TO FALLBROOK PUBLIC UTILITY DISTRICT**

On January 14, 2008, the San Diego Regional Water Quality Control Board (hereafter Regional Board), received settlement offer from the Fallbrook Public Utility District (hereafter FPUD) to waive their right to a hearing regarding violations alleged in Complaint No. R9-2007-0101 (Complaint). The FPUD has offered to settle its potential administrative civil liability for the alleged violations by accepting imposition of Civil Liability in the amount of \$29,300. The Regional Board has provided public notice of the proposed settlement and not less than thirty (30) days for public comment on the settlement offer, and having considered the settlement offer, finds as follows:

1. As of June 2006, the FPUD sewage collection system has been regulated by Regional Board Order No. 96-04, *General Waste Discharge Requirements Prohibiting Sanitary Sewer Overflows by Sewage Collection Agencies*. Prohibition A.1 of Order No. 96-04 specifies that the discharge of sewage from any point upstream of a wastewater treatment plant is prohibited.
2. The FPUD owns, operates, and maintains approximately 76.6 miles of sewage collection pipelines, including a 6-inch diameter sewer pipeline located near 526 Aviation Road, Fallbrook.
3. From 10:00 p.m. on June 17, 2006 to 10:20 a.m. on June 20, 2006, the FPUD discharged a total of 146,625 gallons of untreated sewage from the 6-inch diameter sewer pipeline into Fallbrook Creek in violation of Prohibition A.1 of Order No. 96-04. Fallbrook Creek is tributary to Lake O'Neil and the Santa Margarita River.
4. The liability in the amount of \$29,300 is based on application of the factors prescribed in Water Code Section 13327. The terms of the offered settlement are in the public interest and are consistent with the State Water Resources Control Board Enforcement Policy guidance for violations of this nature, and with liability imposed for similar violations by the Regional Board in other cases that have been settled.
5. By accepting the settlement offered by the FPUD, the Regional Board will conserve staff resources that would have been spent to prepare for hearing and responding to any administrative or judicial review requested by the FPUD.
6. The terms of this settlement are sufficient to deter the FPUD from future non-compliance and act as a deterrent to non-compliance by others.

7. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.) in accordance with section 15321, Chapter 3, Title 14, California Code of Regulations.
8. Regarding the enforcement action, the Regional Board incurred costs totaling \$13,186 which includes investigation, preparation of enforcement documents, and communication with the FPUD and interested parties.
9. In any further judicial or administrative hearing or proceeding, this Order or any portion of it, or any compliance with this Order, shall not be construed in any manner as an admission of liability or wrongdoing by the FPUD, or any of their district council members, officers, agents or employees.

IT IS HEREBY ORDERED that:

1. Civil liability assessment is imposed upon the Fallbrook Public Utility District (hereafter FPUD) in the amount of \$29,300. The assessment shall include the following:
 - a. FPUD shall submit a cashier's check in the amount of \$20,000 to the State Water Resources Control Board (State Board) for deposit into the Waste Discharge Permit Fund Abatement Account within 30 days from adoption of this Order by the Regional Board.
 - b. Payment of the remaining \$9,300 is suspended based upon the FPUD's purchase and installation of three "SmartCover" monitoring units. Within 30 days of adoption of this Order, the FPUD shall submit a certification confirming the completion of implementation of the SmartCover upgrade. The certification shall be executed by a qualified, licensed professional. Upon acceptance of the certification by the Regional Board Assistant Executive Officer, the \$9,300 portion of the assessed liability will be rescinded.

If, however, the implementation of the SmartCover upgrade is not completed and certification is not submitted within 30 days from adoption of this Order by the Regional Board, the suspended liability shall become due and payable. In that case, FPUD shall pay the sum of \$9,300 to the State Water Resources Control Board for deposit into the Waste Discharge Permit Fund Abatement within 30 days following notification by the Regional Board Assistant Executive Officer that the FPUD failed to comply with this portion of the Order.

2. This Order entirely disposes, resolves and settles all liability for violations alleged in Complaint No. R9-2007-0101 related to compliance with requirements in Order No. 96-04 and is not subject to being reopened for any reason.

I, John H. Robertus, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order imposing civil liability assessed by the California Regional Water Quality Control Board, San Diego Region, on March 12, 2008.



JOHN H. ROBERTUS
Executive Officer



Linda S. Adams
Secretary for
Environmental Protection

California Regional Water Quality Control Board San Diego Region

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA



Arnold Schwarzenegger
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4353
(858) 467-2952 • Fax (858) 571-6972
[http:// www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

September 15, 2008

In reply refer to: CA:Reg Mes 330235:fmelbourn
CA:Reg Mes 330267:fmelbourn

Rita Geldert
City Manager
City of Vista
600 Eucalyptus Avenue
Vista, California 92084-6240

Glenn Pruim, P.E.
Public Works Director
City of Carlsbad
1635 Faraday Avenue
Carlsbad, California 92008-7314

Dear Ms. Geldert and Mr. Pruim:

ADOPTION OF ORDER NO. R9-2008-0072 IN SETTLEMENT OF ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R9-2007-0099, BUENA VISTA LAGOON SEWAGE SPILL OF MARCH 31, 2007

On September 10, 2008, the California Regional Water Quality Control Board, San Diego Region (Regional Board), adopted Order No. R9-2008-0072 in settlement of Administrative Civil Liability Complaint No. R9-2007-0099. Order No. R9-2008-0072 formally approves and incorporates the settlement agreement reached between the Cities of Carlsbad and Vista, and the Regional Board Prosecution Team. The Order assesses a liability of \$1,095,000 against the Cities of Carlsbad and Vista.

Payment of \$200,000 shall be made payable to the "California State Water Resources Control Board" for deposit into the Waste Discharge Permit Fund Abatement Account and shall be tendered to the Regional Board address listed in this letterhead no later than 5 p.m. on Friday, October 10, 2008. Payment of \$895,000 shall be made payable to the "National Fish and Wildlife Foundation" for deposit into the Buena Vista Lagoon Restoration Subaccount of the Environmental Fund for Habitat and Incident-Specific Restoration Projects no later than 5 p.m. on Friday, October 10, 2008. A copy of the \$895,000 check and its transmittal letter shall be provided to the Regional Board no later than 5 p.m. on Friday, October 10, 2008. The Cities shall also submit to the Regional Board a copy of the National Fish and Wildlife Foundation's notification of check receipt no later than 5 p.m. on Monday, November 10, 2008.

Failure to submit payment as required by Order No. R9-2008-0072 may result in the referral of this matter to the Attorney General for further enforcement.

Please contact Mr. Frank Melbourn of my staff at (858) 467-2973 or by e-mail at fmelbourn@waterboards.ca.gov if you have any questions concerning this matter. The heading portion of this letter includes a Regional Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence please

California Environmental Protection Agency

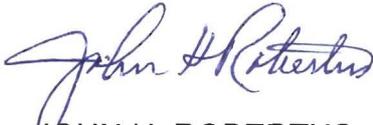
Rita Geldert, City of Vista
Glenn Pruijm, City of Carlsbad
Order No. R9-2008-0072
Buena Vista Lagoon Sewage Spill Settlement

- 2 -

September 15, 2008

include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

Respectfully,



JOHN H. ROBERTUS
Executive Officer

JHR:mja:ftm

Enclosure: Order No. R9-2008-0072

Copies with enclosures to:

1. Paul Alberton, M.D., pgmamd@adelphia.net
2. Regg Antle, M.D., reggantle@cox.net
3. Harriett Bledsoe, hgbledsoe@cox.net
4. Mystie Bollaert, 5410 Sunny Creek Rd., #101, Carlsbad, CA 92010
5. Bob Boss, bobboss@cox.net
6. John Brooks, U.S. Fish & Wildlife Service, 185 W. F St., #440, SD, CA 92101
7. Megan Buczek, megswilb@cox.net
8. Floyd Burgess, 1402 Crestridge Drive, Oceanside, CA 92054-5724
9. Ann Chavez, chav7302@aol.com
10. John Ciarletta, jciarletta@roadrunner.com
11. John Clark, jandpclark@gmail.com
12. Joe Cusimano, 2535 Jefferson St No. 9, Carlsbad, CA 92008-1423
13. Cari Dale, Carlsbad Municipal Water District, cdale@ci.carlsbad.ca.us
14. CJ Di Mento, savebvloppenspace@cox.net
15. Shirley Erdag, erdag@sbcglobal.net
16. Liz Ferguson, lizmarvo@aol.com
17. June Ginger, juggins@att.net
18. Marco Gonzalez, Esq., Coast Law Group LLP, marco@coastlawgroup.com
19. Ken Greenberg, U.S. EPA, Region 9, greenberg.ken@epa.gov
20. Mary Ellen Gregg, megregg@roadrunner.com
21. Judith Hay, 2430 Carriage Circle, Oceanside, CA 92056
22. Ruth Herman, ruthherman@att.net
23. Jeanne Herrick, bsifmc@aol.com
24. Michael Hogan, Encina Wastewater Authority, mhogan@encinajpa.com
25. Richard Hoppe, rpah@sbcglobal.net

California Environmental Protection Agency

Buena Vista Lagoon Sewage Spill Settlement

26. Stephanie Jackel, sjackel@cox.net
27. Donald Jackson, don-jackson1@juno.com
28. Jim Kelly, 2468 Ocean Street, Carlsbad, CA 92008
29. Ronald Kemp, Esq., City of Carlsbad, Rkemp@ci.carlsbad.ca.us
30. Jimmy Knott III, jhk3@cox.net
31. Mo Lahasia, City of Oceanside, mlahsaie@ci.oceanside.ca.us
32. Ronald Leard, 7119 Argonauta Way, Carlsbad, CA 92009
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44. Lawrence Pierce, P.E., City of Vista, lpierce@ci.vista.ca.us
45. Keith Ryan, KRyan@SperianProtection.com
46. Ann Scott, sterlingscott@roadrunner.com
47. Mary Small, msmall@scc.ca.gov
48. Scott Sterling, sterlingcreations@roadrunner.com
49. Deborah Stillman, dwstillman@aol.com
50. Mark Stone, Carlsbad Municipal Water District, mston@ci.carlsbad.ca.us
51. Sharon Taylor, DVM, PhD, U.S. Fish & Wildlife Service, Sharon_Taylor@fws.gov
52. Steven Walder, SWalder264@aol.com
53. Jackye Willis, jackye@digisweat.com
54. Warren Wong, CA Dept. of Fish & Game, wwong@dfg.ca.gov
55. Ron Wooton, Buena Vista Lagoon Foundation, wootland@webcc.net
56. Mary Zepfel, casablanca657@juno.com

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

ORDER NO. R9-2008-0072

ASSESSING

ADMINISTRATIVE CIVIL LIABILITY

FOR VIOLATIONS OF

STATE WATER RESOURCE CONTROL BOARD

GENERAL WASTE DISCHARGE REQUIREMENTS NO. 2006-0003-DWQ

TO

CITY OF VISTA AND CITY OF CARLSBAD

This Order is issued in reference to an adjudicative proceeding initiated by the issuance of Administrative Civil Liability Complaint No. R9-2007-0099, dated September 12, 2007 (Complaint). The parties to this proceeding are the California Regional Water Quality Control Board, San Diego Region's (Regional Board) Prosecution Team, and the Cities of Vista and Carlsbad. Collectively, they are herein referred to as the "Parties."

The Regional Board has been presented with a proposed settlement of the claims alleged in the Complaint that has been developed during negotiations between the Parties' representatives (Attachment 1). The proposed settlement represents a mutually agreed-upon resolution of the Prosecution Team's claims through the payment of an administrative civil liability in the amount of \$1,095,000 consisting of a cash payment of \$200,000 to the State Water Resources Control Board's Waste Discharge Permit Fund Abatement Account and \$895,000 in funding of a Supplemental Environmental Project (SEP) entitled "Buena Vista Lagoon Ecological Reserve Restoration Engineering Studies & Analysis and Buena Vista Creek Ecological Reserve Habitation Restoration." A full description of the proposed SEP can be found at Exhibit B to Attachment 1. The parties recommend that the Regional Board issue this Order to effectuate the proposed settlement. Having provided public notice of the proposed settlement and an opportunity for public comment, the Regional Board finds that:

1. The Cities of Vista and Carlsbad independently own and operate approximately 412 miles of sewer lines within their municipal jurisdictions. The Cities jointly own and operate a sewer interceptor line that originates in Vista and terminates at the Encina Wastewater Treatment Plant in Carlsbad. The Cities jointly own and operate a 24-inch diameter force sewer main that conveys sewage from the Buena Vista Pump Station to the Encina Wastewater Treatment Plant.
2. From March 31, 2007, to April 3, 2007, a total of 7.3 million gallons of untreated sewage discharged from the force sewer main into the Buena Vista lagoon. The

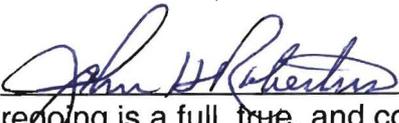
discharge constitutes a violation of Prohibition C.1 of Order No. 2006-0003-DWQ. The Regional Board is authorized to impose an administrative civil liability assessment for the violation under authority of Water Code Section 13350.

3. The proposed SEP seeks funding to provide critical engineering analyses and studies to help restore the habitat and recreational resources of Buena Vista Lagoon and provide improved habitat value within the Buena Vista Creek Ecological Reserve. These studies would include coastal and fluvial processes and wetlands engineering. Approval of the SEP proposal would significantly contribute to these ongoing efforts to restore Buena Vista Lagoon and enhance the natural resources it supports. The Cities have represented and warranted that the contribution to the project that would serve as a SEP under this Order is not and was not previously being contemplated, in whole or in part, by the Cities, for any other purpose except to partially satisfy the Cities' obligations in this Order, and that the Cities' contribution to the project that serves as a SEP would not be made in the absence of this enforcement action.
4. In accepting the proposed settlement, the Regional Board has considered each of the factors prescribed in Water Code Section 13327. The Regional Board's consideration of these factors is based upon information obtained by the Regional Board in investigating the Claims or otherwise provided to the Regional Board; including the information presented at the noticed hearing of this matter. In addition to these factors, the administrative civil liability recovers the costs incurred by the staff of the Regional Board in evaluating the Claims and preparing the Complaint and related documents.
5. A notice of the settlement and assessment of civil liability was published in the North County Times on or before August 8, 2008 notifying the public of the review period and soliciting public comments on the terms of the settlement. The proposed settlement supports the assessment of administrative civil liability in the amount of \$1,095,000 for the Claims and is in the public interest. This settlement and assessment of administrative civil liability provides for the full and final resolution of each of the Claims.
6. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*) in accordance with section 15321, Chapter 3, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED that:

1. The Settlement Agreement (Attachment 1) is approved.

2. Administrative civil liability under Water Code Section 13350 is imposed upon the Cities in the amount of \$1,095,000 to be paid as follows:
 - a. The amount of \$200,000 is due to the State Water Resources Control Board (State Board) for deposit into the Waste Discharge Permit Fund Abatement Account. This payment is to be paid by the Cities within 30 days from the date of this Order; and
 - b. The amount of \$895,000 is due to the National Fish and Wildlife Foundation for deposit into the Buena Vista Lagoon Restoration Project Incident Specific Subaccount of the Environmental Fund for Habitat and Incident Specific Restoration Projects as a Supplemental Environmental Project (SEP) entitled "Buena Vista Lagoon Ecological Reserve Restoration Engineering Studies & Analyses and Buena Vista Creek Ecological Reserve Habitat Restoration." This payment is to be paid by the Cities within 30 days from the date of this Order. Failure of the Cities to pay the full amount within 30 days from the date of this Order will result in the full amount being due and payable to the State Board for deposit into the Waste Discharge Permit Fund Abatement Account.
2. If the Cities publicize the SEP or the results of the SEP, they will state in a prominent manner that the SEP is being undertaken as part of the settlement of this enforcement action by the Regional Board.
3. The Executive Officer is authorized to refer this matter to the Office of the Attorney General for enforcement if the Cities fail to comply with paragraphs 1 or 2.
4. Fulfillment of the Cities' obligations under this Order constitutes full and final satisfaction of any and all liability for each Claim in the Complaint and the Settlement Agreement (Attachment 1).

I,  Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an order imposing civil liability assessed by the California Regional Water Quality Control Board, San Diego Region, on September 10, 2008.

Attachment No. 1 to Order

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

ADMINISTRATIVE CIVIL LIABILITY

COMPLAINT NO. R9-2007-0099

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (“Agreement”) is made and entered into effective September 10, 2008, by and between the City of Vista, the City of Carlsbad and the Prosecution Team (“Prosecution Team”) of the California Regional Water Quality Control Board, San Diego Region (“Regional Board”) (collectively, the “Parties”) with reference to the following facts:

RECITALS:

A. On September 28, 2007, the Assistant Executive Officer of the Regional Board issued Administrative Civil Liability Complaint No. R9-2007-0099 (the “Complaint”), which sought to impose an Administrative Civil Liability order on the Cities of Vista and Carlsbad for a discharge of sewage from their collection system into the Buena Vista Lagoon that occurred on or about March 31, 2007.

B. The Parties, through their respective representatives, have reached a proposed settlement that includes the issuance of an Administrative Civil Liability Order for the discharge from the Cities’ collection system, as described in ACL Complaint No. R9-2007-0099, attached hereto as Exhibit A. The Parties have agreed to present the proposed Administrative Civil Liability, Order No. R9-2008-0072, to the Regional Board for adoption at its September 10, 2008, meeting following the required public notice.

C. The terms of the proposed settlement are that the Cities will jointly pay a total assessment of \$1,095,000, which shall include the following:

- a. The amount of \$200,000 is due to the State Water Resources Control Board (State Board) for deposit into the Waste Discharge Permit Fund Abatement Account. This payment is to be paid by the Cities within 30 days of the adoption of Order No. R9-2008-0072; and
- b. The amount of \$895,000 is due to the National Fish and Wildlife Foundation for deposit into the Buena Vista Lagoon Restoration Project Incident Specific Subaccount of the Environmental Fund for Habitat and Incident Specific Restoration Projects as a Supplemental Environmental Project (SEP). This payment is to be paid by the Cities within 30 days of the adoption of Order No. R9-2008-0072. The SEP entitled “Buena Vista Lagoon Ecological Reserve Restoration Engineering Studies & Analysis and Buena Vista Creek Ecological Reserve Habitation Restoration” is more fully detailed and attached as Exhibit B, California Regional Water Quality Control Board, San Diego Region, Supplemental Environmental

Project Application Form.

D. As a material condition of this Agreement, the Cities represent and warrant that the contributions to the projects that would serve as SEPs under this Agreement are not and were not previously being contemplated, in whole or in part, by the Cities for any purpose other than to partially satisfy the Cities obligations in settling the discharges set forth in the ACL Complaint, and that the Cities contributions to the projects that serve as SEPs would not be made in the absence of this enforcement action.

E. In order to facilitate the approval of the proposed settlement, and to carry out its terms, the Parties desire to enter into the following agreement.

NOW, THEREFORE, in exchange for their mutual promises and for other good and valuable consideration specified herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The Parties agree to support, advocate for, and promote the proposed Administrative Civil Liability, Order No. R9-2008-0072, described above.
2. The Parties covenant and agree that they will not contest the proposed Administrative Civil Liability before the Regional Board, the State Board, or any court if the proposed Order No. R9-2008-0072 is adopted by the Regional Board.
3. The Cities agree to pay the proposed Administrative Civil Liability assessment within 30 days of adoption of Order No. R9-2008-0072.
4. In the event that the SEP described above in C.b., cannot be performed by the U.S. Fish & Wildlife Service and California Department of Fish & Game then the remaining funds shall be paid to the State Board's Waste Discharge Permit Fund Abatement Account.
5. Performance of paragraph 3 (and if applicable, paragraph 4) shall effect a mutual release and discharge of the Parties and their respective successors and assigns, agents, attorneys, employees, officers, and representatives from any and all claims, demands, actions, causes of action, obligations, damages, penalties, liabilities, debts, losses, interest, costs, or expenses of whatever nature, character, or description, that they may have or claim to have against one another by reason of any matter or omission arising from any cause whatsoever relating to the proposed Administrative Civil Liability, Order No. R9-2008-0072, the Discharges, or the Complaint.
6. In the event that the Regional Board does not adopt Order No. R9-2008-0072 at its regular meeting on September 10, 2008, the Cities shall have the right to a hearing on the Complaint at a future Regional Board meeting to be scheduled by the Chair. The Cities agree to a limited waiver of the requirement to have a hearing on the Complaint within 90 days of service under Water Code section 13323(b) conditioned on the

hearing on the proposed settlement being conducted at the September 10, 2008, Regional Board meeting and the hearing on the Complaint, if necessary, being conducted at the October 8, 2008, Regional Board meeting, or if no such meeting occurs, at the next regularly scheduled meeting thereafter. Any further rescheduling of the hearings is subject to the written approval of the Cities. The Parties also agree that, in the event that the Regional Board does not adopt Order No. R9-2008-0072, they waive any and all objections related to their attempt to settle this matter, including, but not limited to, objections related to prejudice or bias of any of the Regional Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Board members and their advisors were exposed to some of the material facts and the parties' settlement positions, and therefore may have formed impressions or conclusions, prior to conducting an evidentiary hearing on the merits of the Complaint.

7. The Parties intend that the procedure that has been adopted for the approval of the settlement by the Parties and reviewed by the public, as reflected by the proposed Order No. R9-2008-0072, and this Agreement, will be adequate. In the event objections are raised during the public comment period for the proposed Order No. R9-2008-0072, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

8. Each person executing this Agreement in a representative capacity represents and warrants that he or she is authorized to execute this Agreement on behalf of and to bind the entity on whose behalf he or she executes the Agreement.

9. This Agreement shall not be construed against the Party preparing it, but shall be construed as if the Parties jointly prepared this Agreement and any uncertainty and ambiguity shall not be interpreted against any one party.

10. This Agreement shall not be modified by any of the Parties by oral representation made before or after the execution of this Agreement. All modifications must be in writing and signed by the Parties.

11. Each Party to this Agreement shall bear all attorneys' fees and costs arising from that Party's own counsel in connection with the matters referred to herein.

12. The Parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

13. This Agreement shall be executed as duplicate originals, each of which shall be deemed an original Agreement, and all of which shall constitute one agreement to be effective as of the Effective Date.

14. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California.

September 10, 2008

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set forth above.

REGIONAL BOARD PROSECUTION TEAM By:


Date: 9/10/08
Mike McCann
Assistant Executive Officer

Approved As To Form:

Date: _____
Jorge A. Leon
Counsel to the Regional Board Prosecution Team

CITY OF VISTA By:


Date: 09/10/08

Approved As To Form:
Darold Pieper, City Attorney

By: _____ Date: _____

CITY OF CARLSBAD By


Date: 9/10/08

Approved As To Form:
Ronald R. Ball, City Attorney

By:  Date: 9/10/08

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

| | | |
|---------------------------------|---|---------------------------------------|
| IN THE MATTER OF: |) | |
| |) | |
| CITY OF VISTA |) | |
| CITY OF CARLSBAD |) | |
| SANITARY SEWER SYSTEM |) | |
| BUENA VISTA PUMP STATION |) | COMPLAINT NO. R9-2007-0099 |
| SEWER MAIN |) | FOR |
| SAN DIEGO COUNTY |) | ADMINISTRATIVE CIVIL LIABILITY |
| |) | |
| |) | VIOLATION OF STATE BOARD |
| |) | ORDER NO. 2006-0003-DWQ |
| |) | |

THE CITY OF VISTA AND CITY CARLSBAD, SANITARY SEWER SYSTEM, BUENA VISTA PUMP STATION SEWER MAIN, ARE HEREBY NOTIFIED THAT:

1. The City of Vista and the City of Carlsbad (Dischargers) are alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (Regional Board) may impose civil liability pursuant to the Porter-Cologne Water Quality Control Act, §13350 of the California Water Code (CWC). The violations alleged herein include violations of a prohibition in waste discharge requirements for the discharges of untreated sewage into waters of the state.
2. The Buena Vista Pump Station is located on Jefferson Street south of Highway 78 within the City of Carlsbad. The Buena Vista Lagoon is located near the intersection of I-5 and Highway 78, within the City of Carlsbad and City of Oceanside.
3. This Administrative Civil Liability Complaint is issued under authority of Water Code Section 13323.
4. The Dischargers are required to operate and maintain their sewage collection systems to prevent sanitary sewer overflows and spills in compliance with requirements of State Water Resources Control Board (SWRCB) Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems
5. The Dischargers discharged untreated sewage to a water of the United States in violation of Prohibition C.1 contained in State Water Resources Control Board (SWRCB) Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems.

ALLEGATIONS

6. The Dischargers violated Prohibition C.1 of Order No. 2006-0003-DWQ by discharging 7.3 million gallons of untreated sewage from March 31, 2007 through April 3, 2007 from their 24-inch diameter sewer main at the Buena Vista Pump Station to Buena Vista Lagoon, a water of the United States.

PROPOSED CIVIL LIABILITY

7. Persons or entities that discharge waste in violation of Waste Discharge requirements are subject to civil liability pursuant to CWC Sections 13350, either on a daily basis not to exceed five thousand dollars (\$ 5,000) for each day the violation occurs, or on a per gallon basis, not to exceed ten dollars (\$ 10) for each gallon of waste discharged, but not both. The statutory maximum ACL amount for the March 31, 2007 through April 3, 2007 sewage discharges therefore is \$ 73,000,000.
8. It is recommended that, pursuant to sections 13350 (a) and (e)(2) of the CWC, the Regional Board impose a civil liability of one million ninety-five thousand dollars (\$1,095,000) on the Dischargers for the violations alleged herein.
9. The factual and legal bases supporting this Complaint are contained in the attached "Staff Report Buena Vista Lagoon Sewage Discharge City of Vista & City of Carlsbad."

Dated this 28 day of September 2007

BY THE EXECUTIVE OFFICER



MICHAEL McCANN

Assistant Executive Officer (Acting)

Signed pursuant to the authority
delegated by the Executive Officer to
the Assistant Executive Officer

CALIFORNIA REGIONAL WATER QUALITY CONTROL
BOARD
SAN DIEGO REGION
(SDRWQCB)

Exhibit B to
Settlement Agreement

SUPPLEMENTAL ENVIRONMENTAL PROJECT APPLICATION FORM

Project Requested by: Natural Resource Co-Trustees - U.S. Fish & Wildlife Service (USFWS) and California Department of Fish and Game (DFG)

Name of Project: Buena Vista Lagoon Ecological Reserve Restoration Engineering Studies & Analyses and Buena Vista Creek Ecological Reserve Habitat Restoration

Date of Request: May 27, 2008

Point of Contact: Natural Resource Co-Trustees USFWS (Sharon K. Taylor) and DFG (Warren Wong)

Phone: USFWS - Sharon K. Taylor (760) 431-9440 ext 220
DFG - Warren Wong (858) 467-4249

E-Mail: USFWS - Sharon K. Taylor sharon_taylor@fws.gov
DFG - Warren Wong wwong@dfg.ca.gov

Project Summary

Buena Vista Lagoon Ecological Reserve has been adversely impacted over time by a concrete weir built across the ocean entrance in the 1940s that controls the water level. Unique among the county's six coastal lagoons, Buena Vista Lagoon currently has no tidal flushing due to its present elevation and configuration. Historically, the lagoon was a tidal system. The presence of the weir at the mouth of the lagoon, combined with increasing sediment and nutrient loading, has reduced the depth and circulation of the lagoon, accelerated the growth of cattail, bulrush, and algal growth, and led to the decline of biodiversity and increased vector problems. Numerous agencies and organizations have been working toward restoring the lagoon including, but not limited to, the USFWS, DFG, State Coastal Conservancy, Southern California Wetlands Recovery Project, and the Carlsbad Watershed Network.

The 134 acre Buena Vista Creek Ecological Reserve was acquired for conservation in March 2007 by the California Department of Fish and Game (DFG). Approximately 12 acres located on the property have been degraded by agricultural land use. This acreage needs restoration to address this fallow agricultural land in the Buena Vista Creek flood plain and riparian corridor as well as upland areas. This project addresses 4 acres of this site. Restoration of this land to native habitats will benefit water quality in the downstream portions of the creek and Buena Vista Lagoon; improve riparian buffers and habitat in this reach of Buena Vista Creek; decrease excessive siltation and sedimentation; and create habitat for federally and State listed wildlife species such as the least Bell's vireo (*Vireo bellii pusillus*) and the coastal California gnatcatcher (*Poliioptila californica californica*).

This SEP proposal seeks funding for Buena Vista Lagoon Ecological Reserve Restoration Engineering Studies & Analyses and Buena Vista Creek Ecological Reserve Habitat Restoration. For Buena Vista Lagoon this SEP would provide critical engineering analyses and studies to help restore the habitat and recreational resources of Buena Vista Lagoon. These studies would include coastal and fluvial processes and wetlands engineering. For Buena Vista Creek, this SEP would provide improved habitat value within the Reserve, located north and south of the Buena Vista Creek. Areas would be restored to riparian habitat (southern willow scrub and riparian forest) as they are adjacent to Buena Vista Creek, which currently supports these vegetation types. Approval of this SEP proposal would significantly contribute to these restoration of Buena Vista Lagoon and Creek and enhance the natural resources they support.

Total Life Cycle Cost for the Project

Cost estimates for engineering analyses and studies, including the administrative overhead and contingency required for the Buena Vista Lagoon and Buena Vista Creek restoration based on funding in FY 2008 are listed below.

| | | | |
|---------------------------------------|--|--------------------------|-------------------|
| Buena Vista Lagoon Ecological Reserve | | | |
| Coastal Processes | | \$ 250,000 | |
| Construction and Maintenance | | \$ 50,000 | |
| Water Quality | | <u>\$ 200,000</u> | |
| | | | \$ 500,000 |
| | | | |
| Buena Vista Creek Ecological Reserve | | | |
| Site clean-up & Site preparation | | \$ 150,000 | |
| Plant Installation | | \$ 150,000 | |
| Site Maintenance & monitoring | | <u>\$ 95,000</u> | |
| | | | <u>\$ 395,000</u> |
| | | | |
| | | Total Sep Request | \$ 895,000 |

Watershed/Water Body/Location for Project (attach maps)

Buena Vista Lagoon Ecological Reserve is located approximately 35 miles north of San Diego, on the border between the cities of Oceanside and Carlsbad in San Diego County, California. The lagoon, which is bordered by the Pacific Ocean on the west, Vista Way / Highway 78 on the north, and Jefferson Street on the east and south, covers an area of approximately 225 acres. The lagoon is part of the El Salto Watershed. See attached Figures 1 and 2.

Buena Vista Creek Ecological Reserve is located approximately 35 miles north of San Diego, on the border between the cities of Oceanside and Carlsbad in San Diego County, California. The Ecological Reserve, which is bordered by Highway 78 on the north, Flower Fields Way on the south and at the terminus of Hayman Drive on the east and west, covers an area of approximately 134 acres. Buena Vista Creek is part of the El Salto Hydrological Sensitive Area which is within the Carlsbad Hydrologic Unit. See attached Figure 3.

Project Proposed Start Date and Time Line

The proposed project is anticipated to commence as soon as contracts are in place, which is estimated to occur within 3-6 months of funding. Some of the studies are sequential in nature, so these would be initiated upon completion of others. The Buena Vista Lagoon Engineering studies and analyses are estimated to be completed within 2 years upon funding. The Buena Vista Creek Habitat Restoration is estimated to be completed also within 2 years followed by 3 years of monitoring.

Organization Sponsoring Project (tax I.D. #): DFG 94-1697567

Name of Project Manager: Natural Resource Co-Trustees - USFWS (Sharon K. Taylor) and DFG (Warren Wong)

Phone: USFWS - Sharon K. Taylor (760) 431-9440 ext 220
DFG - Warren Wong (858) 467-4249

Designated Project Trustee: Natural Resource Co-Trustees USFWS (Sharon K. Taylor) and DFG (Warren Wong)

Description of Project Trustee capability to ensure that the project will be complete
As co-trustees, both the USFWS and DFG have agency mandates to protect the natural resources that are proposed under this SEP proposal. DFG has the mandate to manage Buena Vista Lagoon as an ecological reserve and has direct responsibility for overseeing the site. The US Fish & Wildlife Service has trustee resource responsibilities that include threatened and endangered species, as well as migratory birds and compliance with the National Environmental Policy Act (NEPA). Both agencies have extensive documented histories and commitments in working to restore Buena Vista Lagoon and Creek.

Statement of Project Trustee ability/authority to receive and disburse funds
Funds are proposed to be held in the Environmental Fund for Habitat and Incident Specific Restoration Projects with the National Fish and Wildlife Foundation pursuant to the Memorandum of Agreement between the California Department of Fish and Game and the National Fish and Wildlife Foundation to Establish the Environmental Fund for Habitat and Incident-Specific Restoration Projects (attached). Funds will be placed in an Incident Specific Subaccount within the above referenced fund for the Buena Vista Lagoon Restoration Project and would be disbursed upon joint approval of the USFWS and DFG co-trustees. USFWS and DFG have jointly worked together on multiple projects as co-trustees.

DETAILED PROJECT INFORMATION

1 and 2. PROPOSAL DESCRIPTION AND PROBLEM STATEMENT

Buena Vista Lagoon Ecological Reserve

Buena Vista Lagoon has been adversely impacted over time by a concrete weir built across the ocean entrance in the 1940s that controls the minimum water level. Unique among the county's six coastal lagoons, Buena Vista Lagoon currently has no tidal flushing due to its present elevation and configuration. Historically, the lagoon was a tidal system. The presence of the weir at the mouth of the lagoon, combined with increasing sediment and nutrient loading has reduced the depth and circulation of the lagoon, accelerated the growth of cattail, bulrush, and algal growth, and lead to the

decline of biodiversity and increased vector problems. Numerous agencies and organizations have been working toward restoring the lagoon including, but not limited to, the USFWS, DFG, State Coastal Conservancy, Southern California Wetlands Recovery Project, and the Carlsbad Watershed Network.

The first phase of the restoration effort was completed in 1999 and consisted of a field program to collect data on the fauna, flora, and water quality of the lagoon. The second phase, initiated in 2004, would characterize existing conditions, identify constraints, develop restoration alternatives, analyze the restoration alternative, and would prepare and apply potential alternative evaluation methodology in determining the ultimate configuration of the lagoon and its hydrologic regime. Initial studies and analyses required in this second phase have been funded by the USFWS and State Coastal Conservancy (SCC), yet additional engineering studies and analyses are required for the completion of the lagoon restoration plan and have not been completed due to the lack of a funding source. Without completion of these studies, restoration of Buena Vista Lagoon cannot proceed.

This SEP proposal seeks funding to provide critical engineering analyses and studies to help restore the habitat and recreational resources of Buena Vista Lagoon. These studies would include coastal and fluvial processes and wetlands engineering that will result in plans and specifications to then implement the restoration. Specifically, these engineering analyses include:

- I) Coastal Processes
 - a. Ebb and Flood Bar Growth
 - b. Shoreline Morphology
 - c. Coastal Erosion Protection
- II) Construction and Maintenance
 - a. Construction Cost Estimates
 - b. Maintenance Cost Estimates
- III) Water Quality
 - a. Lagoon Water Quality
 - b. Nearshore Water Quality

Buena Vista Creek Ecological Reserve

The 134 acre Buena Vista Creek Ecological Preserve was acquired for conservation in March 2007 by the California Department of Fish and Game (DFG). The proposed restoration areas have been in agricultural use for decades, leaving fallow agricultural land subject to erosion and siltation of downstream reaches of the creek and Buena Vista Lagoon. It also allows non-native, invasive plants to establish and spread making future restoration much more difficult and costly. Funds for restoration of the fallow agricultural lands were not included in the original land management endowment.

This project addresses 4 acres of this fallow land, and the restoration of this land to native habitats to benefit water quality in the downstream portions of the creek and Buena Vista Lagoon; improve riparian buffers in this reach of Buena Vista Creek; decrease excessive siltation and sedimentation; and create habitat for federally and State listed wildlife species such as the least Bell's vireo (*Vireo bellii pusillus*) and the coastal California gnatcatcher (*Polioptila californica californica*). There are 2.2 acres south of the creek and 1.8 acres north of the creek. All areas would be restored to riparian habitat (southern

willow scrub and riparian forest) as they are adjacent to Buena Vista Creek, which currently supports these vegetation types.

3. HOW WILL THE PROJECT BENEFIT WATER QUALITY AND BENEFICIAL USES?

Historically, Buena Vista Lagoon had periodic tidal influence. A weir installed at the ocean inlet in the 1940s isolates the lagoon from tidal influence and regulates water levels. Thus the lagoon has become a very efficient sediment trap. Estimates of the 1940-1982 sedimentation rate, based on cores of the lagoon bed, was 35,000 tons accrued per year.

If funded, this SEP will provide critical engineering analyses and studies to help restore the habitat and recreational resources of Buena Vista Lagoon. Approval of the project would provide information necessary to develop a long-term, sustainable configuration for the lagoon. Beneficial Uses identified in the Basin Plan are: REC1, REC2, BIOL, WILD, RARE, MAR, and WARM. Restoration would provide habitat for sensitive wildlife including light-footed clapper rail, California least tern and Belding's savannah sparrow and other wildlife. Removal of sediment and nutrients from the lagoon would provide additional habitat for fish and recreational opportunities for users and would also reduce fish die-offs. Water quality would be enhanced through a reduction in turbidity and nutrient load and the reduced potential for eutrophication. Depending on the final hydrologic regime, restoration could also potentially add EST, MIGR, and SPAWN uses to the lagoon.

Buena Vista Creek Ecological Reserve is about 1.3 miles upstream from Buena Vista Lagoon. The Lagoon is on the Clean Water Act 303(d) list with impairment for siltation and bacteria. This habitat restoration project will directly benefit the downstream reaches of the creek and lagoon by reducing sediment discharge and allowing for natural filtration of upstream pollutants.

4. HOW WILL THE SUCCESS OF THIS PROJECT BE MEASURED?

The success of the Buena Vista Lagoon project will be measured by the completion and acceptance by the co-trustees of the engineering studies and analyses reports. These studies will be included in environmental documents to be circulated for agency and public review. The success of the Buena Vista Creek Project will be measured by that it is estimated that restoration of the riparian areas will occur within 5 years based on the following success criteria of: 75-85% cover of native riparian plant species (based on visual observations; all native vegetation free of irrigation for 2 years; and less than 1% cover of state and federally listed noxious weeds (based on visual observation).

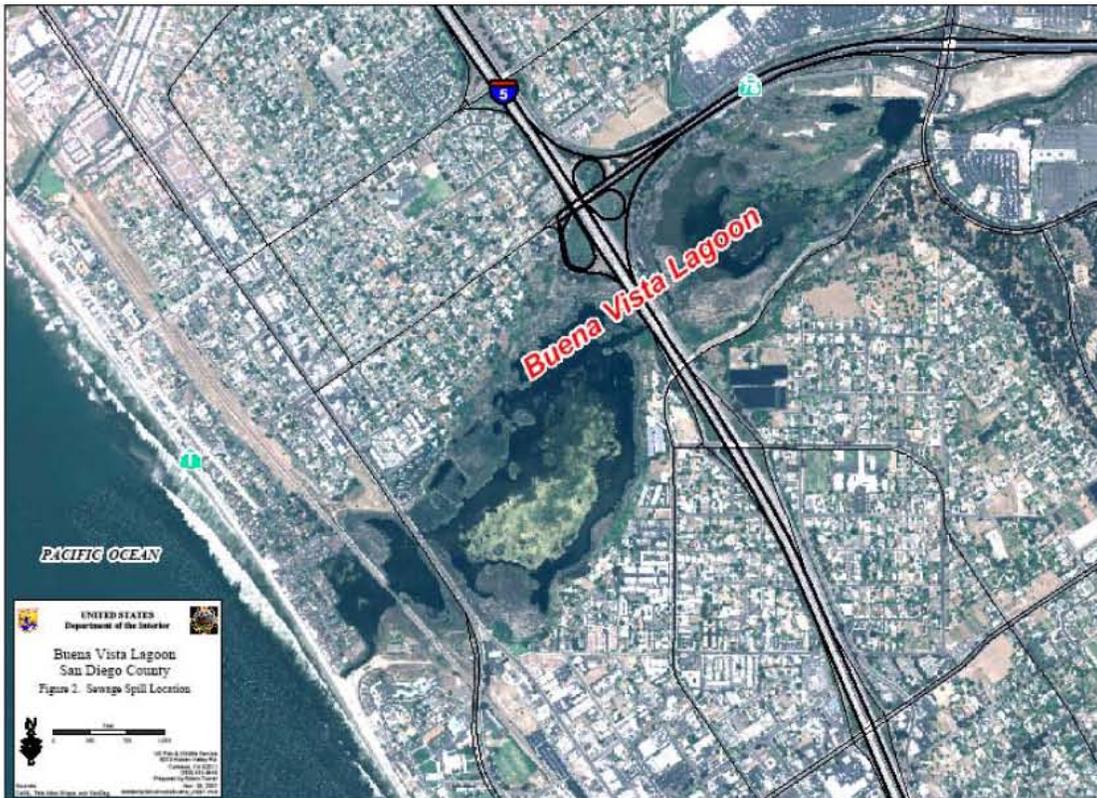
5. DETAILED WORK PLANS

Please see the attached detailed work plans.

I certify that the information provided in this application is an accurate and complete report of the costs, scope of work and expectations of this proposed project I am submitting to the SDRWQCB.

SIGNATURE Sharon K. Taylor **Date** 5/30/08

SIGNATURE  **Date** 5/30/08





Work Plan for Supplemental Environmental Project Proposal

Buena Vista Lagoon Restoration – Engineering Studies and Analyses January 8, 2008

A. Scope of work

Buena Vista Lagoon has been adversely impacted over time by a concrete weir built across the ocean entrance in 1940's that controls the water level. Unique among the county's six coastal lagoons, Buena Vista Lagoon currently has no tidal flushing due to its present elevation and configuration. Historically, the lagoon was a tidal system. The presence of the weir at the mouth of the lagoon, combined with increasing sediment and nutrient loading has reduced the depth and circulation of the lagoon, accelerated the growth of cattail, bulrush, and algal growth, and lead to the decline of biodiversity and increased vector problems. Numerous agencies and organizations have been working toward restoring the lagoon including, but not limited to, the USFWS, DFG, State Coastal Conservancy, Southern California Wetlands Recovery Project, and the Carlsbad Watershed Network.

The first phase of the restoration effort was completed in 1999 and consisted of a field program to collect data on the fauna, flora, and water quality of the lagoon. The second phase, initiated in 2004, would characterize existing conditions, identify constraints, develop restoration alternatives, analyze the restoration alternative, and would prepare and apply potential alternative evaluation methodology in determining the ultimate configuration of the lagoon and its hydrologic regime. Initial studies and analyses required in this second phase have been funded by the USFWS and State Coastal Conservancy (SCC), yet additional engineering studies and analyses required for the completion of the lagoon restoration plan and have not been completed due to a lack of a funding source.

This SEP proposal seeks funding to provide critical engineering analysis and studies to help restore the habitat and recreational resources of Buena Vista Lagoon. These studies would include coastal and fluvial processes and wetlands engineering.

B. Task descriptions

Below is a list of task descriptions of the currently unfunded engineering studies and analysis for the Buena Vista Lagoon Restoration Project. Descriptions are excerpted from the Everest International Consultants, Inc. Buena Vista Lagoon Restoration Report.

Coastal Processes

Ebb and Flood Bar Growth

This task consists of analyses aimed at estimating the volume and growth rate of the ebb bar and flood bar that would form after opening the new tidal inlet. This information is needed to evaluate maintenance (dredging, excavation, and disposal) as well as to assess impacts to upcoast and downcoast beaches associated with sand trapped in the bar system. This task is interrelated with the shoreline morphology task described below.

Shoreline Morphology

This task consists of numerical modeling aimed at estimating the change in shoreline position (e.g., mean sea level shoreline) due to project-related changes to the littoral processes. This information is needed to assess the impacts of inlet channel stabilization structures (e.g., jetties) as well as the impacts of the ebb and flood bar system on upcoast and downcoast beaches. This task is interrelated with the ebb bar and flood bar growth task above.

Coastal Erosion Protection

This task consists of analyses aimed at designing erosion protection for the area in the immediate vicinity of the tidal inlet. This information is needed to protect the properties on either side of the tidal inlet from project-induced erosion associated with the jetties and ebb/flood bar system. This task is interrelated with the shoreline morphology task described above.

Construction & Maintenance

Construction Cost Estimates

This task consists of the preparation of construction cost estimates for the three restoration alternatives. This information is needed to assess the funding requirements for construction of the various restoration alternatives.

Maintenance Cost Estimates

This task consists of the preparation of maintenance cost estimates for the three restoration alternatives. This information is needed to assess the funding requirements for long-term maintenance of the various restoration alternatives as well as to help establish maintenance responsibilities for the various agencies and organizations. This task is interrelated with the ebb/flood bar task described above.

Water Quality

Lagoon Water Quality

This task consists of numerical modeling and/or empirical analyses aimed at estimating the concentration of water quality constituents within the lagoon under the three restoration alternatives. This information is needed to help assess the project-related impacts on lagoon water quality.

Nearshore Water Quality

This task consists of numerical modeling and/or empirical analyses aimed at estimating the concentration of water quality constituents within the nearshore coastal waters near the project site under the three restoration alternatives. This information is needed to help assess the project-related impacts on nearshore water quality. This task is interrelated with the ebb/flood bar task described above.

C. Budget & Schedule

Potential timeframes and budget allowances to complete the engineering analyses were developed based on prior experience with similar wetlands restoration projects in Southern California. The analyses were also grouped according to work type. The results of this effort are shown in Table 1, which presents the grouping, timeframe, and allowance for each analysis. Adjustments in the project plan may need to occur based on initial studies. The total budget allowance, including overhead and contingency to complete these preliminary engineering tasks, was estimated to be \$ 500,000.

Table 1. Timeframe and Budget Allowance Estimates for Engineering Analyses

| Analysis | Grouping | Timeframe | Allowance |
|--|-------------------------------|--------------------------|------------------|
| Ebb & Flood Bar Growth Shoreline Morphology Coastal Erosion Protection | Coastal Processes | 6-12 months | \$250,000 |
| Construction Cost Estimates Maintenance Cost Estimates | Construction & Maintenance | 1 - 2 months | \$50,000 |
| Lagoon Water Quality Nearshore Water Quality | Water Quality | 3 - 6 months | \$200,000 |
| TOTAL: | | 18 -24 months | \$500,000 |

* Based on simultaneous completion of parallel tasks with full funding.

D. Methods and materials

Standardized engineering methods that are accepted throughout the industry will be utilized. A quality assurance/quality control review process will be developed and utilized to ensure data collected and reports provided meet the needs of the restoration effort.

E. Resources needed

The co-trustees have access to the resources needed, if this SEP proposal is funded. The engineering work will be contracted out and administered through the DFG. Both the USFWS and DFG will oversee the completion of projects as co-trustees.

F. Regulatory issues (environmental reviews, permits, etc.)

In spring 2006, work began on the environmental review process required to comply with the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA). A public meeting was held in April 2007 to solicit input regarding the scope of the environmental document. Preparation of the Environmental Impact Report/Environmental Impact Statement (EIR/EIS) is underway and is the next step in the CEQA/NEPA process. The analyses/studies must be completed in order to provide the information necessary to prepare the EIR/EIS.

H. Work products and documents to be retained for records

Copies of all final work products and documents will be retained for records. In addition, both the USFWS and DFG as federal and state agencies have records retention policies.

Work Plan for Supplemental Environmental Project Proposal

Buena Vista Creek Habitat Restoration

May 27, 2008

A. Scope of work

The 134 acre Buena Vista Creek Ecological Reserve was acquired for conservation in March 2007 by the California Department of Fish and Game (DFG). Approximately 12 acres located on the property have been degraded by agricultural land use. This site needs restoration to address this fallow agricultural land in the Buena Vista Creek flood plain and riparian corridor as well as upland areas. This project addresses 4 acres of this site. Restoration of this land to native habitats will benefit water quality in the downstream portions of the creek and Buena Vista Lagoon; improve riparian buffers in this reach of Buena Vista Creek; decrease excessive siltation and sedimentation; and create habitat for federally and State listed wildlife species such as the least Bell's vireo (*Vireo bellii pusillus*) and the coastal California gnatcatcher (*Polioptila californica californica*).

The proposed Buena Vista Creek Habitat Restoration Project is for the restoration of 4 acres of agricultural land from its current condition (fallow, minimal native plant components) to riparian habitat. The riparian areas are 2.2 acres and 1.8 acres. The project would include trash and debris removal, soils testing and amendment addition, if needed, pre- and post-emergent herbicide application and invasive plant removal, installation of native container plants and cuttings, and maintenance, monitoring and reporting until achieving success criteria.

B. Task Descriptions

Below is a list of task descriptions of the currently unfunded habitat restoration for the Buena Vista Creek Habitat Restoration Project.

Site clean-up

At this time the site is predominately clean of trash and debris. The only cleanup would be the removal of nonnative vegetation as part of site preparation.

Site preparation

Soil testing will be performed on each parcel to determine if any amendments are required. Soil amendments will be added as necessary. All areas will be treated with a pre- or post-emergent herbicide prior to plant installation. Overhead irrigation will be installed in the riparian areas using water provided by the already existing on-site artesian pond.

Plant Installation

Approximately 2000 plant cuttings per acre will be installed. Cuttings would primarily be willows (*Salix* spp.), but may include other riparian species. All cuttings will be taken from existing vegetation on-site. Each area will also be hydroseeded with a native riparian seed mix consisting of the following species: *Salix lasiolepis*, *Platanus racemosa*, *Baccharis salicifolia*, *Rubus ursinus*, and *Rosa californica*.

Maintenance and Monitoring

The sites would be maintained at least six times a year for the first two years after plant installation and then four times a year for the subsequent three years. This would include weed removal, any remedial measures (such as replacing willow cuttings, if deemed necessary), maintaining the irrigation system and qualitative monitoring. Qualitative monitoring will occur once per year for a period of five years, and will include photo documentation and site inspection for plant conditions and non-native species cover.

C. Budget & Schedule

Potential timeframes and budget allowances to complete the habitat restoration were developed based on prior experience with similar wetlands restoration projects in Southern California. Table 1 presents the task groupings, timeframe, and budget. Adjustments in the project plan may need to occur as the project moves forward. The total budget allowance, including overhead and contingency to complete these preliminary tasks, is estimated to be \$395,000.

| Task | Timeframe | Allowance |
|----------------------------------|------------------|------------------|
| Site clean up & Site Preparation | 6-12 months | \$150,000 |
| Plant Installation | 12-24 months | \$150,000 |
| Site Maintenance & Monitoring | 36 months | \$95,000 |
| Total | | \$395,000 |

D. Methods and materials

Standardized habitat restoration methods that are accepted throughout the industry will be used. A quality assurance/quality control review process will be developed and utilized to ensure data collected and reports provided meet the needs of the restoration effort.

E. Resources needed

The co-trustees have access to the resources needed, if this SEP proposal is funded. The work will be contracted out and administered through the DFG. Both the USFWS and DFG will oversee the completion of projects as co-trustees.

F. Regulatory issues (environmental reviews, permits, etc.)

Both DFG and USFWS would request a restoration plan and agency notification. However, at this time, it is unlikely that regulatory permits, or California Environmental Quality Act (CEQA) or a National Environmental Quality Act (NEPA) analysis would be necessary or required based on the project description.

H. Work products and documents to be retained for records

Copies of all final work products and documents will be retained for records. In addition, both the USFWS and DFG as federal and state agencies have records retention policies.

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

ORDER NO. R9-2008-0159

**ADMINISTRATIVE ASSESSMENT CIVIL LIABILITY
AGAINST
SANTA MARGARITA WATER DISTRICT
SEWAGE COLLECTION SYSTEM
FOR
VIOLATIONS OF ORDER NO. R9-2007-0005**

The California Regional Water Quality Control Board, San Diego Region (Regional Board), having held a public hearing on December 10, 2008, to hear evidence and comments on the allegations contained in Complaint No. R9-2008-0057, dated September 22, 2008, and deliberating on the evidence presented at the public hearing and in the record, after determining the allegations contained in the Complaint to be true, having provided public notice thereof and not less than thirty (30) days for public comment and on the recommendation for administrative assessment of Civil Liability in the amount of \$133,190 finds as follows:

1. The Santa Margarita Water District (Discharger) is required to operate and maintain its sewage collection systems to prevent sanitary sewer overflows and spills in compliance with requirements of State Board Order No. 2006-0003-DWQ, *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems*, and Regional Board Order No. R9-2007-0005, *Waste Discharge Requirements for Sewage Collection Agencies in the San Diego Region*.
2. Prohibition B.1 of Order No. R9-2007-0005 states that the discharge of sewage from a sanitary sewer system at any point upstream of a sewage treatment plant is prohibited.
3. On September 22, 2008, ACL Complaint No. R9-2008-0057 was issued to the Discharger for the following violations of Prohibition B.1 of Order No. R9-2007-0005
 - a. The Discharger violated Prohibition B.1 of Order No. R9-2007-0005 by discharging a total of 392,000 gallons of sewage from April 5-8, 2007 from the 16-inch diameter Ortega Force Main located on Ortega Highway, in unincorporated Orange County, California. The discharge entered San Juan Creek, waters of the State.
 - b. The Discharger violated Prohibition B.1 of Order No. R9-2007-0005 by discharging a total of 495,934 gallons of sewage from July 3 to July 4, 2007 from the 16-inch diameter Talega Force Main located

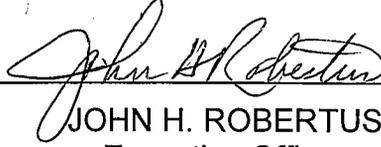
within Rancho Mission Viejo Land Conservancy, in unincorporated Orange County, California. The discharge went to Cristianitos Creek, waters of the State.

4. Issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) pursuant to section 15321(a)(2), Chapter 3, Title 14 of the California Code of Regulations. This action is also exempt from the provisions of CEQA in accordance with section 15061(b)(3) of Chapter 3, Title 14 of the California Code of Regulations because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.
5. Consideration of the factors prescribed in CWC Section 13327 based upon information available to the Regional Board prior to the hearing and described in greater detail in the technical report for Complaint No. R9-2008-0057 supports the assessment of civil liability in the amount of \$133,190.
6. The Regional Board incurred costs of \$20,500 to prosecute the enforcement action; the costs include investigation, preparation of enforcement documents, communicating with the Discharger and preparation of materials for public review and hearing.

IT IS HEREBY ORDERED, pursuant to California Water Code Section 13350, that civil liability assessment is imposed upon the Santa Margarita Water District (Discharger) in the amount of \$133,190.

1. The Discharger shall submit a check to the Regional Board in the amount of \$133,190 payable to the "State Water Resources Control Board" within 30 days of adoption of this Order.
2. Fulfillment of the Discharger's obligations under this Order constitutes full and final satisfaction of any and all liability for each allegation in Complaint No. R9-2008-0057.
3. The Executive Officer is authorized to refer this matter to the Office of the Attorney General for collection or other enforcement if the Discharger fails to comply with paragraph 1.

I, John H. Robertus, Executive Officer, do hereby certify the foregoing is a full, true and correct copy of an Order imposing civil liability assessed by the California Regional Water Quality Control Board, San Diego Region, on December 10, 2008.

A handwritten signature in cursive script, appearing to read "John H. Robertus", is written over a horizontal line.

JOHN H. ROBERTUS
Executive Officer

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

| | | |
|------------------------------|---|---------------------------------------|
| IN THE MATTER OF: |) | COMPLAINT NO. R9-2009-0040 |
| |) | FOR |
| CITY OF LAGUNA BEACH |) | ADMINISTRATIVE CIVIL LIABILITY |
| SANITARY SEWER SYSTEM |) | |
| ORANGE COUNTY |) | |
| |) | |
| PLACE ID: 631920 |) | August 18, 2009 |
| REG MSR: 213937 |) | |

THE CITY OF LAGUNA BEACH, SANITARY SEWER SYSTEM, IS HEREBY GIVEN NOTICE THAT:

1. The City of Laguna Beach (Discharger) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (Regional Board) may impose civil liability pursuant to Section 13385 of the California Water Code (CWC).
2. This Administrative Civil Liability Complaint is issued under authority of CWC Section 13323.
3. The Discharger owns and operates approximately 99.5 miles of sewer lines, including the Bluebird SOCWA Lift Station, located near the intersection of Calliope Street and Glenneyre Street, Laguna Beach, California. The Discharger is required to operate and maintain its sewage collection systems to prevent sanitary sewer overflows (SSOs) in compliance with requirements of both the State Board Order No. 2006-0003-DWQ, *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems* (hereinafter the "State Board Order") and the Regional Board Order No. R9-2007-0005, *Waste Discharge Requirements for Sewage Collection Systems San Diego Region* (hereinafter the "Regional Board Order").
4. State Board Order Prohibition C.1 states "Any SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited." State Board Order Prohibition C.2 states "Any SSO that results in a discharge of untreated or partially treated wastewater that creates a nuisance as defined in California Water Code Section 13050(m) is prohibited."
5. Section 301 of the Clean Water Act (33 U.S.C. § 1311) and CWC Section 13376 prohibit the discharge of pollutants to surface waters except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. State Board Order No. 2006-0003-DWQ is not an NPDES permit.

August 18, 2009

ALLEGATIONS

5. The Discharger violated Prohibition C.1 and C.2 of the State Board Order, Section 301 of the Clean Water Act, and CWC section 13376 by discharging a total of 590,000 gallons of untreated sewage on October 29, 2008, from the Bluebird SOCWA Lift Station to the Pacific Ocean, a water of the State of California and a water of the United States, without authorization under an NPDES permit.
6. The details of these violations are set forth in full in the accompanying Staff Report, which is incorporated herein by this reference as if set forth in full.
7. Pursuant to CWC Section 13385(a), any person who violates CWC Section 13376 or any requirements of Section 301 of the Clean Water Act is subject to administrative civil liability pursuant to CWC Section 13385(c), in an amount not to exceed the sum of both the following: (1) ten thousand dollars (\$10,000) for each day in which the violation occurs; and (2) where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.
8. The alleged violation, set forth in full in the accompanying Staff Report, constitutes a violation under CWC Section 13385. The maximum liability that the Regional Water Board may assess pursuant to CWC Section 13385(e) is **\$5,900,000** (589,000 [gallons discharged but not cleaned up in excess of 1,000 gallons] X \$10 [per gallon]) + (1 [days of violation] X (\$10,000 [per day of violation]) = \$5,900,000)

PROPOSED CIVIL LIABILITY

7. It is recommended that pursuant to CWC Section 13385(c), the Regional Board should impose a civil liability of seventy thousand, six hundred eighty dollars (\$70,680) on the City of Laguna Beach for the discharge of 590,000 gallons of untreated sewage on October 29, 2008.

Dated this 18th Day of August 2009



MICHAEL P. McCANN
Assistant Executive Officer

Signed pursuant to the authority
delegated by the Executive Officer to
the Assistant Executive Officer

STATE WATER RESOURCES CONTROL BOARD

In the matter of:)
)
CITY OF STOCKTON) Order WQ-2009-00XX-EXEC
)
SIU-REF-000217/City of) **SETTLEMENT AGREEMENT AND**
) **STIPULATION FOR ENTRY OF**
Stockton/RB5-S) **ADMINISTRATIVE CIVIL LIABILITY ORDER**
) **(PROPOSED)**

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (hereafter "Stipulated Order" or "Order") is entered into by and between the Chief Deputy Director of the State Water Resources Control Board ("State Water Board"), on behalf of the State Water Board Prosecution Staff ("Prosecution Staff") and the City of Stockton (Collectively "Parties") and is presented to the State Water Board for adoption as an Order by settlement, pursuant to Government Code section 11415.60.

1. **RECITALS**

WHEREAS, at all times relevant to this matter, the City of Stockton was the owner of the Stockton Regional Wastewater Control Facility ("SRWCF" or "Facility"), located at 2500 Navy Drive, Stockton, CA 95206, and was responsible for the operation and maintenance thereof in accordance with National Pollution Discharge Elimination System ("NPDES") Permit No. CA0079138, Waste Discharge Requirements Order No. R5-2002-0083 ("NPDES Permit");

WHEREAS, OMI-Thames Water Stockton, Inc. ("OMI-Thames Water Stockton") operated and maintained the SRWCF under a service contract with the City of Stockton from August 1, 2003 through February 29, 2008;

WHEREAS, on June 16, 2006, there was a discharge from the SRWCF of approximately 8.7 million gallons of partially treated effluent to the San Joaquin River ("the Event");

WHEREAS, the CHIEF DEPUTY DIRECTOR OF THE STATE WATER BOARD, by and through the Prosecution Staff, and with the assistance of the Central Valley Regional Water Quality Control Board (Central Valley Water Board) Staff, investigated the circumstances of the Event;

WHEREAS, the Prosecution Staff alleges that the Event occurred in violation of NPDES Permit Discharge Prohibition No. A.2., which states, in part, that "the bypass or overflow of wastes to surface waters is prohibited." The specific alleged violations are described in Exhibit A, attached hereto;

WHEREAS, the Prosecution Staff agrees that the City of Stockton and its contract operator, OMI-Thames Water Stockton, have fully cooperated with its investigation and voluntarily provided records and information requested by the Prosecution Staff. The Prosecution Staff recognizes that, upon discovery of the Event,

OMI-Thames Water Stockton promptly notified all relevant authorities, including the State Water Board, the Central Valley Water Board, the State Office of Emergency Services, the California Department of Fish and Game, the San Joaquin Environmental Health Department, and the National Response Center;

WHEREAS, the Prosecution Staff recognizes that the Event was not intentional and caused no measurable environmental harm; and

WHEREAS, the Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulated Order to the State Water Board for adoption as an Order by settlement, pursuant to Government Code section 11415.60. The Prosecution Staff believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the specific violations alleged in Exhibit A, except as provided in the Stipulated Order, and that this Stipulated Order is in the best interest of the public.

2. **JURISDICTION**

The Parties agree that the State Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulated Order.

3. **SETTLEMENT AND DISPUTED CLAIMS**

The City of Stockton and its contractor OMI-Thames Water Stockton expressly deny the allegations described in Exhibit A and this Stipulated Order. Neither this Stipulated Order nor any payment pursuant to the Order shall constitute evidence of, or be construed as, a finding, adjudication, or acknowledgment of any fact, law or liability, nor shall it be construed as an admission of violation of any law, rule, or regulations. However, this Order and/or any actions or payment pursuant to the Order may constitute evidence in actions seeking compliance with this Order. This Order may be used as evidence of a prior enforcement action in any future actions by the State Water Board or by the Central Valley Water Board against the City of Stockton.

4. **ADMINISTRATIVE CIVIL LIABILITY**

Upon issuance of this Stipulated Order, the City of Stockton shall be liable for a total of TWO MILLION FOUR HUNDRED TWENTY FIVE THOUSAND DOLLARS (\$2,425,000), as set forth in Paragraphs 4.1 through 4.3, below.

4.1. **Paid Liability**

Within 30 days of issuance of this Stipulated Order, the City of Stockton shall remit, by check, THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000), payable to the *State Water Resources Control Board Cleanup and Abatement Account*, and shall indicate on the check the number of this Stipulated Order. The City of Stockton shall send the original signed check to State Water Resources Control Board, Department of Administrative Services, PO Box 1888, Sacramento, CA 95812-1888, with copies sent to: Reed Sato, Director, State Water Resources Control Board, Office of Enforcement,

P.O. Box 100, Sacramento, CA 95812, and David Boyers, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812.

4.2. Third Party Audit

The City of Stockton shall expend a minimum of SEVENTY FIVE THOUSAND DOLLARS (\$75,000) to retain a neutral third party that will review the operation of the City's Facility over a period of three years. The third party auditor must be approved, in writing, by the Director of the State Water Board's Office of Enforcement and the Executive Officer of the Central Valley Water Board. The City shall submit a request for approval of the third party auditor to the Director of the State Water Board and the Executive Officer of the Central Valley Water Board, together with the proposed contract for services, within 120 days upon issuance of this Stipulated Order. The contract shall require that the third party auditor perform annual inspections of the City's Facility at regular intervals over a period of three years. The contract shall require that the third party review, at a minimum, the following aspects of the operation of the City's Facility:

- a. Staffing levels for the SRWCF operations department;
- b. Staffing levels for the SRWCF maintenance department;
- c. Staffing levels for the collection, pretreatment and stormwater systems;
- d. Backlog of corrective and preventive maintenance work orders; and
- e. Employee training program.

The contract shall require that the third party auditor report its findings to the City of Stockton, the State Water Board, and the Central Valley Water Board within 60 days of each inspection.

4.3. Environmental Improvement Credit

4.3.1. Against the City of Stockton's total liability of \$2,425,000, the City shall be credited TWO MILLION DOLLARS (\$2,000,000) in costs associated with increasing staffing levels at the SCWRF, as follows:

- a. ONE MILLION DOLLARS in costs incurred by the City to increase operations staff at the SCWRF from the time period of December 11, 2007 to June 30, 2008 (Phase I Staffing Increase); and
- b. ONE MILLION DOLLARS in costs incurred by the City to increase operations staff at the SCWRF from the time period of June 31, 2008 to January 1, 2011 (Phase II Staffing Increase).

4.3.2. The City of Stockton shall provide evidence acceptable to the Director of the State Water Board's Office of Enforcement that it has expended monies in the amount set forth in Paragraph 4.3.1.a. above, including, without limitation, a certified report by the City of Stockton describing the expenditures made. Such evidence shall be submitted to the Director of the Office of Enforcement within 60 days following issuance of this Stipulated Order.

4.3.3. The City of Stockton shall provide evidence acceptable to the Director of the State Water Board's Office of Enforcement that it has expended monies in the

amount set forth in Paragraph 4.3.1.b. above, including, without limitation, a certified report by the City of Stockton describing the expenditures made. Such evidence shall be submitted to the Director of the Office of Enforcement on or before February 1, 2010 for costs incurred between June 31, 2008 and January 1, 2010, and on or before February 1, 2011 for costs incurred between January 2, 2010 and January 1, 2011.

4.3.4. In the event that the City of Stockton is not able to demonstrate to the reasonable satisfaction of the Director of the Office of Enforcement that it has expended \$2,000,000 for the staffing increases, the City of Stockton shall undertake additional Environmental Improvement work reasonably approved by the Director of the Office of Enforcement and shall incur additional costs equal to the amount of the difference between the amount reasonably accepted by the Director of the Office of Enforcement and \$2,000,000. The Prosecution Staff may seek to enforce this requirement by petition to the State Water Board, and the City of Stockton shall have the burden of proving that it has met the requirements of Paragraphs 4.3.2 and 4.3.3. The Parties shall meet and confer prior to the filing of any petition to enforce this Paragraph.

5. **MATTERS COVERED BY THIS STIPULATED ORDER**

Upon adoption by the State Water Board, this Stipulated Order represents a final and binding resolution and settlement of all claims, violations or causes of action alleged in this Order or which could have been asserted based on the specific facts alleged in this Exhibit A or this Stipulated Order against the City of Stockton as of the effective date of this Stipulated Order. The provisions of this Paragraph are expressly conditioned on the City's full payment of administrative civil liability by the deadlines specified in Paragraph 4.1 of and its full satisfaction of the obligations described in Paragraphs 4.2 and 4.3.

6. **COVENANT NOT TO SUE**

Upon the effective date of this Stipulated Order, the City of Stockton shall and does release, discharge and covenant not to sue or pursue and civil or administrative claims against the State Water Board, including its officers, agents, directors, employees, contractors, subcontractors, attorneys, representatives, predecessors-in-interest, and successors and assigns for any and all claims or causes of action, of every kind and nature whatsoever, in law and equity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, which arise out of or are related to this action.

7. **PUBLIC NOTICE**

The Parties agree that the proposed Stipulated Order, as signed by the Parties, will be noticed for a 30-day public comment period prior to being presented to the State Water Board for adoption. If the State Water Board Chief Deputy Director or other Prosecution Staff receives significant new information that reasonably affects the propriety of presenting this Stipulated Order to the State Water Board for adoption, the State Water Board Chief Deputy Director may unilaterally declare this Stipulated Order void and decide not to present the Order to the State Water Board. The City of Stockton agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.

8. **PROCEDURE**

The Parties agree that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected in this Order, will be adequate. In the event procedural objections are raised prior to this Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

9. **WAIVERS**

In the event that this Stipulated Order does not take effect because it is not approved by the State Water Board, or is vacated in whole or in part by a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the State Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties also agree to waive any and all objections related to their efforts to settle this matter, including, but not limited to:

a. Objections related to prejudice or bias of any of the State Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the State Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing on the Complaint in this matter; or

b. Laches or delay or other equitable defenses based on the time period that the order or decision by settlement may be subject to administrative or judicial review.

10. **APPEALS**

The City of Stockton hereby waives its right to appeal this Stipulated Order to a California Superior Court and/or any California appellate level court.

11. **EFFECT OF STIPULATED ORDER**

Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order is intended nor shall it be construed to preclude the Prosecution Staff or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation at the Facility.

12. **WATER BOARDS NOT LIABLE**

Neither the State Water Board members, staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the City of Stockton, its employees, representative agents, attorneys, or contractors in carrying out activities pursuant to this Stipulated Order, nor shall the State Water Board members, staff, attorneys or representatives be held as parties to or guarantor of any

contract entered into by the City of Stockton, its employees, representative agents, attorneys, or contractors in carrying out activities required pursuant to this Stipulated Order.

13. **NO WAIVER OF RIGHT TO ENFORCE**

The failure of the Prosecution Staff or State Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Stipulated Order. The failure of the Prosecution Staff or State Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order. No oral advice, guidance, suggestions or comments by employees or officials of any Party regarding matters covered under this Stipulated Order shall be construed to relieve any Party regarding matters covered in this Stipulated Order.

14. **REGULATORY CHANGES**

Nothing in this Stipulated Order shall excuse the City of Stockton from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.

15. **AUTHORITY TO ENTER STIPULATED ORDER**

Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Order on behalf of and to bind the entity on whose behalf he or she executes the Order.

16. **INTEGRATION**

This Stipulated Order constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Stipulated Order.

17. **MODIFICATION OF STIPULATED ORDER**

This Order shall not be modified by any of the Parties by oral representation made before or after the execution of this Order. All modifications must be made in writing and approved by the State Water Board or its Executive Director.

18. **CERTIFICATION**

Whenever this Stipulated Order requires the certification by the City of Stockton, such certification shall be provided by a City employee at a managerial level in charge of municipal utilities. Each certification shall read as follows:

To the best of my knowledge, based on information and belief and after reasonable investigation, I certify that the information contained in or accompanying this submission is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

19. **INTERPRETATION**

This Stipulated Order shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.

20. **COUNERTPART SIGNATURES**

This Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

21. **INCORPORATION OF EXHIBITS**

Exhibit "A" is incorporated by reference.

IT IS SO STIPULATED:

State Water Board Prosecution Staff

By: _____
Jonathon Bishop, Chief Deputy Director

Date

City of Stockton

By: _____
J. Gordon Palmer, Jr., City Manager

Date

**HAVING CONSIDERED THE ALLEGATIONS AND THE PARTIES' STIPULATIONS,
THE STATE WATER BOARD FINDS THAT:**

22. Issuance of this Stipulated Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with sections 15061(b)(3) and 15321(a)(2), of Title 14 of the California Code of Regulations.

23. In adopting this Stipulated Order, the State Water Board has considered all the factors prescribed in Water Code section 13327. The State Water Board's consideration of these factors is based upon information and comments provided by the Parties and by members of the public.

24. This Order is not precedential.

Order WQ 2009-00XX-EXEC
Stipulated Administrative Civil Liability Order
City of Stockton

- 8 -

PURSUANT TO WATER CODE SECTION 13323 AND GOVERNMENT CODE SECTION 11415.60, **IT IS HEREBY ORDERED** ON BEHALF OF THE STATE WATER BOARD.

Dorothy Rice
Executive Director

Date

EXHIBIT A - ALLEGATIONS

1. The City of Stockton is the owner of the Stockton Regional Wastewater Control Facility ("SCWRF" or "Facility"), located at 2500 Naval Drive, Stockton, CA 95206, and is responsible for the operation and maintenance thereof in accordance with National Pollution Discharge Elimination System ("NPDES") Permit No. CA0079138, Waste Discharge Requirements Order No. R5-2002-0083 ("NPDES Permit").
2. OMI-Thames Water Stockton, Inc. ("OMI-Thames Water Stockton") operated and maintained the SRWCF under a service contract with the City of Stockton from August 1, 2003 through February 29, 2008.
3. On June 16, 2006, 8.7 there was a discharge from the SRWCF of approximately 8.7 million gallons of partially treated effluent to the San Joaquin River ("the Event").
4. The Event occurred in violation of NPDES Permit Discharge prohibition No. A.2., which states, in part, that "the bypass or overflow of wastes to surface waters is prohibited."
5. The discharge described above in Paragraph 3 is not susceptible to cleanup and was not cleaned up.

POTENTIAL MAXIMUM CIVIL LIABILITY

6. Water Code section 13385, subdivision (a) provides that civil liability may be administratively imposed by the State Water Resources Control Board (State Water Board) against any person that violates any waste discharge requirements issued pursuant to Chapter 5.5 of Division 7 of the Water Code. The City of Stockton NPDES Permit was issued pursuant to Chapter 5.5 of Division 7 of the Water Code.
7. Water Code section 13385, subdivision (c) provides that the civil liability may be imposed by the State Water Board in an amount not to exceed the sum of both the following:
 - a. Ten thousand dollars (\$10,000) for each day in which the violation occurs.
 - b. Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.
8. The City is exposed to liability pursuant to section 13385, subdivision (c) by failing to comply with its NPDES Permit on June 16, 2006, when 8.7 Million gallons of un-disinfected secondary wastewater effluent was discharged to the San Joaquin River.
9. The maximum liability for the violation described above, pursuant to section 13385, subdivision (c) of the Water Code is:

| PENALTY CATEGORY | CALCULATION | TOTAL |
|---|------------------------------------|-------------------------|
| Failure to comply with Waste Discharge Requirements Order No. R5-2002-0083, NPDES No. CA 0079138 | One day (June 16, 2006) x \$10,000 | \$ 10,000.00 |
| Additional liability for volume of discharge over 1,000 gallons which is not susceptible to cleanup or which is not cleaned up. | 8,699,000 gallons x \$10/gallons. | \$ 86,990,000.00 |
| Potential Penalty | | \$ 87,000,000.00 |

CONSIDERATION OF FACTORS

10. Pursuant to Water Code section 13327, the State Water Board is required to consider the following factors in determining the amount of civil liability, including the nature, circumstance, extent, and gravity of the violation; whether the discharge is susceptible to cleanup or abatement; the degree of toxicity of the discharge; and with respect to the violator, the ability to pay; the effect on the ability to continue in business; voluntary cleanup efforts; prior history of violations; the degree of culpability; economic benefit or savings, if any, resulting from the violation; and other matters that justice may require.

a. Nature, Circumstance, Extent, and Gravity of the Violations

1. The Event occurred due to an open effluent diversion gate located near the outfall at the SCWRF and lasted from approximately 8:30 AM until 6:30 PM.
2. The diversion gate at the SCWRF operates between the siphon entry box and a channel containing enhanced secondary treated effluent, and is designed to recycle water through the plant when it is necessary to stop the flow of effluent to the river.
3. Historically, the diversion gate had been operated manually, but in 2006, the operation of the gate was modified so that it could be opened either manually or automatically. The automation of the diversion gate was intended to protect personnel who were installing a weir inside the chlorine contact basin by preventing sudden flooding of the basin.
4. On June 16, 2006, discharge to the San Joaquin River dropped to near zero during a backwash of several filters. Due to improper wiring of the gate during its automation by a third-party contractor, this low flow condition activated the diversion gate to open even though flow to the San Joaquin River had not completely ceased. The open gate allowed the secondary effluent from the diversion channel to mix with the fully treated effluent in the siphon entry box before being discharged.

5. There were no violations of the NPDES Permit water quality effluent limitations caused by the discharge and there is no evidence to suggest any measurable harm to the environment occurred.

6. As described in Paragraphs 10.a.7. through 10.a.10, below, while the direct cause of the discharge was the improper wiring of the gate, the magnitude of the discharge was exacerbated by inadequate levels of staffing, preventative and corrective maintenance, and the lack of training to the operators regarding the installation and use of the diversion gate.

7. At least three experienced operators were at the facility during the incident, which covered two shifts.

8. On or prior to June 16, 2006, someone switched the diversion gate from "manual" to "automatic" mode without notifying anyone or documenting this change in the SCWRF logbook, which should have occurred.

9. The modification of the bypass gate was supposed to include an alarm that would notify the operators when the bypass gate opened. Testing of the gate and operator training were also specified in the document "SPA 11F" that discussed the proposed modifications to the gate. The alarm was not installed as proposed by the design engineer and the gate was never fully tested in automatic mode. The operators were notified of the changes; however, they received no formal training.

10. The plant operations are managed by a Supervisory Control and Data Acquisition ("SCADA") system, a computer control of the operations. The SCADA system provides real time data as to chemical feed rates, and automatic monitoring readouts. Information is displayed on a computer screen either numerically or graphically. Certain data showing on the SCADA system indicated a problem with the discharge, including a drop in effluent dissolved oxygen to approximately 3.8 mg/l dissolved oxygen, a change in pH from 6.5 to approximately 7.2 standard units, a significant increase in turbidity, and a change in metering flow. These conditions should have triggered an investigation by the Chief Plant Operator or other operators and timely discovery of the discharge.

b. Susceptibility to Cleanup or Abatement

The discharge is not susceptible to cleanup or abatement.

c. Degree of Toxicity

Since no toxicity analysis was done on samples collected after the discharge, there is no evidence to indicate if the discharge had significant deleterious effect on the aquatic life in the receiving waters.

d. Ability to Pay

Not applicable.

e. Effect on Ability to Continue Business

Not applicable.

f. Voluntary Cleanup Efforts

No voluntary cleanup efforts were made by the City of Stockton related to the Event.

g. Prior History of Violations

1. In 1985, the Central Valley Regional Water Quality Control Board ("Central Valley Water Board") issued Administrative Civil Liability Order No. 85-268, imposing \$50,000 in civil liability for certain effluent limit violations.

2. In 1999, the Central Valley Water Board issued Administrative Civil Liability Complaint No. 99-503 to the City of Stockton in response to a discharge that occurred on October 8, 1998 of approximately 6.11 million gallons of effluent with a calculated chlorine residual of 6.3 mg/l to the receiving water. The City waived its right to a hearing and paid the proposed liability of \$100,000.

3. In 2004, the Central Valley Water Board issued Administrative Civil Liability Complaint No. R5-2004-0535 to the City of Stockton, alleging the discharge of 480,000 gallons of groundwater containing approximately 40 gallons of 12.5% sodium hypochlorite solution into the Woodbridge Irrigation District South Main Canal, a water of the United States, without an NPDES Permit. OMI-Thames Water Stockton paid the proposed liability of \$125,000 on behalf of the City without a hearing.

h. Degree of Culpability

1. The City of Stockton has a moderate degree of culpability. As described above, while the direct cause of the discharge was the improper wiring of the gate, the magnitude of the discharge was exacerbated by inadequate levels of staffing, preventative and corrective maintenance, and the lack of training to the operators regarding the installation and use of the diversion gate.

2. There are no standards regarding the number of staff required to operate a Wastewater Treatment Facility.

i. Economic Savings Resulting from the Violations

The discharger did not gain any quantifiable economic benefit or savings from the violation.

j. Other Matters as Justice May Require

The State Water Board and Central Valley Water Board expended approximately 304 hours of staff time on the investigation (initial inspections and interviews) of the Event and follow-up inspections. The total staff costs (at \$150/hour) are estimated at \$45,600.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
REGION 9, SAN DIEGO REGION

ORDER R9-2007-0005

WASTE DISCHARGE REQUIREMENTS
FOR SEWAGE COLLECTION AGENCIES
IN THE SAN DIEGO REGION

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), finds that:

1. **STATEWIDE GENERAL WASTE DISCHARGE REQUIREMENTS:** State Water Resource Control Board (State Board) Order No. 2006-0003-DWQ, *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems*, adopted by the State Board on May 2 2006, establishes minimum requirements to prevent sanitary sewer overflows (SSOs) from publicly owned/ operated sanitary sewer system. Order No. 2006-0003-DWQ is the primary regulatory mechanism for sanitary sewer systems statewide, but allows each regional board to issue more stringent or more prescriptive Waste Discharge Requirements (WDRs) for sanitary sewer systems within their respective jurisdiction.
2. **ENROLLMENT UNDER ORDER NO. 2006-0003-DWQ:** In accordance with Order No. 2006-0003-DWQ, all federal and state agencies, municipalities, counties, districts, and other public entities that own, operate, acquire, or assume responsibility for sanitary sewer systems greater than one mile in length that collect and/or convey untreated or partially treated wastewater to a publicly owned treatment facility in the State of California are required to apply for coverage under the general WDRs.
3. **ORDER No. 96-04:** On May 9, 1996, this Regional Board adopted Order No. 96-04, *General Waste Discharge Requirements Prohibiting Sanitary Sewer Overflows by Sewage Collection Agencies*, prohibiting the discharge of sewage from a sanitary sewer system at any point upstream of a sewage treatment plant. Each Sewage Collection Agency currently regulated under Order No. 96-04 is required to obtain enrollment under the State Board Order No. 2006-0003-DWQ.
4. **SAN DIEGO REGION SANITARY SEWER OVERFLOW REGULATIONS:** Order No. 96-04 has been an effective regulatory mechanism in reducing the number and magnitude of sewage spills in the Region. The Order is more stringent and prescriptive than Order No. 2006-0003-DWQ in that Order No. 2006-0003-DWQ may allow some SSOs that are currently prohibited under Order No. 96-04. In order to maintain regulation of Sanitary Sewer Systems in the San Diego Region consistent with the provisions of Order No. 96-04, this Order reaffirms the prohibition on all SSOs upstream of a sewage treatment plant. This strict prohibition implements the requirements contained in the Basin Plan, California Water Code, and Federal Clean Water Act.

5. **CONSISTENT REGIONAL REQUIREMENTS:** The regulation of all Sewage Collection Agencies will be consistent within the San Diego Region by requiring agencies such as California Department of Corrections; California State University, San Marcos; San Diego State University; and University of California, San Diego, which have not been regulated under Order No. 96-04, to comply with Regional Board requirements that augment State Board Order No. 2006-0003-DWQ.
6. **BASIN PLAN:** The Regional Board adopted a Water Quality Control Plan for the San Diego Basin (hereinafter Basin Plan) on September 8, 1994. The Basin Plan was subsequently approved by the State Board on December 13, 1994. Subsequent revisions to the Basin Plan have also been adopted by the Regional Board and approved by the State Board. The Basin Plan designates beneficial uses, narrative, and numerical water quality objectives, and prohibitions which are applicable to the discharges prohibited under this Order.
7. **PROHIBITIONS CONTAINED IN BASIN PLAN:** The Basin Plan contains the following prohibitions which are applicable to the discharges prohibited under this Order:
 - a. "The discharge of waste to waters of the state in a manner causing, or threatening to cause a condition of pollution, contamination, or nuisance as defined in California Water Code Section 13050, is prohibited."
 - b. "The discharge of treated or untreated waste to lakes or reservoirs used for municipal water supply, or to inland surface water tributaries thereto, is prohibited."
 - c. "The discharge of waste to inland surface waters, except in cases where the quality of the discharge complies with applicable receiving water quality objectives, is prohibited. ..."
 - d. "The dumping, deposition, or discharge of waste directly into waters of the state, or adjacent to such waters in any manner which may permit its being transported into the waters, is prohibited unless authorized by the Regional Board."
 - e. "The unauthorized discharge of treated or untreated sewage to waters of the state or to a storm water conveyance system is prohibited."
 - f. "The discharge of waste to land, except as authorized by waste discharge requirements or the terms described in California Water Code Section 13264 is prohibited."
 - g. "The discharge of waste in a manner causing flow, ponding, or surfacing on lands not owned or under the control of the discharger is prohibited, unless the discharge is authorized by the Regional Board."

8. **PORTER-COLOGNE WATER QUALITY CONTROL ACT (CALIFORNIA WATER CODE, DIVISION 7):** California Water Code Section 13243 provides that a Regional Board, in establishing waste discharge requirements, may specify certain conditions or areas where the discharge of waste, or certain types of waste, is prohibited. California Water Code 13260 prohibits the discharge of waste to land prior to the filing of a required report of waste discharge and the subsequent issuance of either WDRs or a waiver of WDRs. California Water Code 13264 prohibits discharge of waste absent a report of waste discharge and waste discharge requirements.
9. **FEDERAL CLEAN WATER ACT:** The Federal Clean Water Act largely prohibits any discharge of pollutants from a point source to waters of the United States except as authorized under an NPDES permit. In general, any point source discharge of sewage effluent to waters of the United States must comply with technology-based, secondary treatment standards, at a minimum, and any more stringent requirements necessary to meet applicable water quality standards and other requirements. Hence, the unpermitted discharge of wastewater from a sanitary sewer system to waters of the United States is illegal under the Clean Water Act. Furthermore, the Code of Federal Regulation requires proper operation and maintenance of all POTW facilities including collection systems, which results in prevention of SSOs.
10. **RESCISSION OF ORDER No. 96-04:** Order No. 96-04 can be rescinded after all of the Sewage Collection Agencies regulated under Order No. 96-04 have obtained coverage under Order No. 2006-0003-DWQ.
11. **PRIVATE LATERAL SEWAGE DISCHARGES REPORTING:** Order No. 96-04 does not require Sewage Collection Agencies to report Private Lateral Sewage Discharges. Over the past several years, however, this Regional Board has been tracking the number of Private Lateral Sewage Discharges based on courtesy reports from the Sewage Collection Agencies. During the period from July 2004 through June 2006, a total of 268 Private Lateral Sewage Discharges were reported by the Agencies. During some of those months, more Private Lateral Sewage Discharges were reported than public SSOs. Because the Agencies are not required to report Private Lateral Sewage Discharges, it is not known if the numbers reported fully represent the number and locations of Private Lateral Sewage Spills in the Region.

Finding Nos. 2, 3, and 4 of State Board Order No. 2006-0003-DWQ pertaining to causes of SSOs and the potential threat to water quality resulting from SSOs are also applicable to Private Lateral Sewage Discharges. Because Private Lateral Sewage Discharges are numerous and are a potential threat to public health and the environment, there is a need to have a reliable reporting system for Private Lateral Sewage Discharges for similar reasons as the public SSOs. Although sewage collection agencies are not responsible for the cause, cleanup, or repair of Private Lateral Sewage Discharges, sewage collection agencies are typically notified and/or are the first responders to Private Lateral Sewage Discharges. Consequently, requiring the sewage collection agencies to report all known Private Lateral Sewage Discharges is reasonable and a first step toward development of a regulatory approach for reducing Private Lateral Sewage Discharges in the San Diego Region.

12. **PERMITTING FEES:** This Order will serve as additional requirements to the State Board Order No. 2006-0003-DWQ. Sewage Collection Agencies that are covered and pay the fees under State Board Order No. 2006-0003-DWQ (or orders that supersede 2006-0003-DWQ) will not be required to pay for fees under this Order No. R9-2007-0005.
13. **CALIFORNIA ENVIRONMENTAL QUALITY ACT:** The action to adopt this Order is exempt from the California Environmental Quality Act (Public Resources Code §21000 et seq.) because it is an action taken by a regulatory agency to assure the protection of the environment and the regulatory process involves procedures for protection of the environment. (Cal. Code Regs., tit. 14, §15308). In addition, the action to adopt this Order is exempt from CEQA pursuant to Cal. Code Regs., title 14, §15301 to the extent that it applies to existing sanitary sewer collection systems that constitute "existing facilities" as that term is used in Section 15301, and §15302, to the extent that it results in the repair or replacement of existing systems involving negligible or no expansion of capacity.
14. **PUBLIC NOTICE:** The Regional Board has notified all known interested persons and the public of its intent to consider adoption of this Order. Interested persons and the public have had reasonable opportunity to participate in review of the proposed Order.
15. **PUBLIC HEARING:** The Regional Board has considered all comments pertaining to this Order submitted to the Regional Board in writing, or by oral presentations at the public hearing held on February 14, 2007.

IT IS HEREBY ORDERED, that all Sewage Collection Agencies within the San Diego Region, in order to meet the provisions contained in Division 7 of the California Water Code and regulations adopted thereunder, shall comply with the following, in addition to the State Water Resource Control Board Order No. 2006-0003-DWQ (or orders that supersede 2006-0003-DWQ) and its addenda (hereinafter referred to as State Board Order):

A. Definitions

1. For purposes of this Order, a Sewage Collection Agency shall mean an "enrollee", as defined in the State Board Order, within the boundaries of the San Diego Region.

B. Prohibition

1. The discharge of sewage from a sanitary sewer system at any point upstream of a sewage treatment plant is prohibited.

C. Monitoring and Reporting Program Requirements

1. Each Sewage Collection Agency shall report all SSOs in accordance with the Monitoring and Reporting Program No. 96-04 until the Sewage Collection Agency notifies the Regional Board that they can successfully report the SSOs to the State Board Online SSO System. The notification shall be a letter signed and certified by a person designated, for a municipality, state, federal or other public agency, as either a principal executive officer or ranking elected official.
2. For Category 1 (as defined in State Board Monitoring and Reporting Program No. 2006-0003-DWQ) SSOs, the Sewage Collection Agency shall provide notification of the SSO to the Regional Board by phone, email, or fax within 24 hours after the Sewage Collection Agency becomes aware of the SSO, notification is possible, and notification can be provided without substantially impeding cleanup or other emergency measures. The information reported to the Regional Board shall include the name and phone number of the person reporting the SSO, the responsible sewage collection agency, the estimated total sewer overflow volume, the location of the SSO, the receiving water (if any), the start date/time of the SSO (if known), the end date/time of the SSO (or whether or not the sewer overflow is still occurring at the time of the report), and confirmation that the local health services agency was or will be notified as required under the reporting requirements of the local health services agency.
3. The Sewage Collection Agency shall provide notification of all Private Lateral Sewage Discharges (as defined in the State Board Order), for which they become aware of, that equal or exceed 1,000 gallons; result in a discharge to a drainage channel and/or surface water; and/or discharge to a storm drainpipe that was not fully captured and returned to the sanitary sewer system, to the Regional Board by phone or fax within 24 hours after the Sewage Collection Agency becomes aware of the Private Lateral Sewage Discharge, notification is possible, and notification can be provided without substantially impeding cleanup or other emergency measures. The information reported to the Regional Board shall include the following information, if known: the name and phone number of the person reporting the Private Lateral Sewage Discharge, the service area where the Private Lateral Sewage Discharge occurred, the responsible party (other than the Sewage Collection Agency, if known), the estimated Private

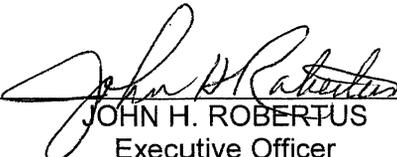
Lateral Sewage Discharge volume, the location of the Private Lateral Sewage Discharge, the receiving water (if any), the start date/time of the Private Lateral Sewage Discharge, the end date/time of the Private Lateral Sewage Discharge (or whether or not the sewer overflow is still occurring at the time of the report), and confirmation that the local health services agency was or will be notified as required under the reporting requirements of the local health services agency.

4. The following requirement supersedes the Private Lateral Sewage Discharge Reporting Timeframe for Private Lateral Sewage Discharges in the State Board Monitoring and Reporting Program No. 2006-0003-DWQ: For Private Lateral Sewage Discharges that occur within a Sewage Collection Agency's service area and that a Sewage Collection Agency becomes aware of, the Sewage Collection Agency shall report the Private Lateral Sewage Discharge to the State Board Online SSO Database within 30 days after the end of the calendar month in which the Private Lateral Sewage Discharge occurs. The Sewage Collection Agency must identify the sewage discharge as occurring and caused by a private lateral, and a responsible party (other than the Sewage Collection Agency) should be identified, if known. The Sewage Collection Agency will not be responsible for the cause, cleanup, or repair of Private Lateral Sewage Discharges, but only the reporting of those within their jurisdiction and for which they become aware of.

D. Notification

1. Upon completion with Monitoring and Reporting Program Requirement C.1, the Regional Board will give written notice to the Sewage Collection Agency stating that regulation of the Sewage Collection Agency under Order No. 96-04 is terminated.
2. Order No. 96-04 is rescinded once regulation of all Sewage Collection Agencies under Order No. 96-04 is terminated. The Regional Board will give written notice to all of the Sewage Collection Agencies stating that all Sewage Collection Agencies under Order No. 96-04 was terminated and, thus, Order 96-04 is rescinded.

I, John Robertus, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of Order No. 2007-0005 adopted by the California Regional Water Quality Control Board, San Diego Region on February 14, 2007.



JOHN H. ROBERTUS
Executive Officer

**STATE WATER RESOURCES CONTROL BOARD
ORDER NO. 2006-0003-DWQ**

**STATEWIDE GENERAL WASTE DISCHARGE REQUIREMENTS
FOR
SANITARY SEWER SYSTEMS**

The State Water Resources Control Board, hereinafter referred to as "State Water Board", finds that:

1. All federal and state agencies, municipalities, counties, districts, and other public entities that own or operate sanitary sewer systems greater than one mile in length that collect and/or convey untreated or partially treated wastewater to a publicly owned treatment facility in the State of California are required to comply with the terms of this Order. Such entities are hereinafter referred to as "Enrollees".
2. Sanitary sewer overflows (SSOs) are overflows from sanitary sewer systems of domestic wastewater, as well as industrial and commercial wastewater, depending on the pattern of land uses in the area served by the sanitary sewer system. SSOs often contain high levels of suspended solids, pathogenic organisms, toxic pollutants, nutrients, oxygen-demanding organic compounds, oil and grease and other pollutants. SSOs may cause a public nuisance, particularly when raw untreated wastewater is discharged to areas with high public exposure, such as streets or surface waters used for drinking, fishing, or body contact recreation. SSOs may pollute surface or ground waters, threaten public health, adversely affect aquatic life, and impair the recreational use and aesthetic enjoyment of surface waters.
3. Sanitary sewer systems experience periodic failures resulting in discharges that may affect waters of the state. There are many factors (including factors related to geology, design, construction methods and materials, age of the system, population growth, and system operation and maintenance), which affect the likelihood of an SSO. A proactive approach that requires Enrollees to ensure a system-wide operation, maintenance, and management plan is in place will reduce the number and frequency of SSOs within the state. This approach will in turn decrease the risk to human health and the environment caused by SSOs.
4. Major causes of SSOs include: grease blockages, root blockages, sewer line flood damage, manhole structure failures, vandalism, pump station mechanical failures, power outages, excessive storm or ground water inflow/infiltration, debris blockages, sanitary sewer system age and construction material failures, lack of proper operation and maintenance, insufficient capacity and contractor-caused damages. Many SSOs are preventable with adequate and appropriate facilities, source control measures and operation and maintenance of the sanitary sewer system.

SEWER SYSTEM MANAGEMENT PLANS

5. To facilitate proper funding and management of sanitary sewer systems, each Enrollee must develop and implement a system-specific Sewer System Management Plan (SSMP). To be effective, SSMPs must include provisions to provide proper and efficient management, operation, and maintenance of sanitary sewer systems, while taking into consideration risk management and cost benefit analysis. Additionally, an SSMP must contain a spill response plan that establishes standard procedures for immediate response to an SSO in a manner designed to minimize water quality impacts and potential nuisance conditions.
6. Many local public agencies in California have already developed SSMPs and implemented measures to reduce SSOs. These entities can build upon their existing efforts to establish a comprehensive SSMP consistent with this Order. Others, however, still require technical assistance and, in some cases, funding to improve sanitary sewer system operation and maintenance in order to reduce SSOs.
7. SSMP certification by technically qualified and experienced persons can provide a useful and cost-effective means for ensuring that SSMPs are developed and implemented appropriately.
8. It is the State Water Board's intent to gather additional information on the causes and sources of SSOs to augment existing information and to determine the full extent of SSOs and consequent public health and/or environmental impacts occurring in the State.
9. Both uniform SSO reporting and a centralized statewide electronic database are needed to collect information to allow the State Water Board and Regional Water Quality Control Boards (Regional Water Boards) to effectively analyze the extent of SSOs statewide and their potential impacts on beneficial uses and public health. The monitoring and reporting program required by this Order and the attached Monitoring and Reporting Program No. 2006-0003-DWQ, are necessary to assure compliance with these waste discharge requirements (WDRs).
10. Information regarding SSOs must be provided to Regional Water Boards and other regulatory agencies in a timely manner and be made available to the public in a complete, concise, and timely fashion.
11. Some Regional Water Boards have issued WDRs or WDRs that serve as National Pollution Discharge Elimination System (NPDES) permits to sanitary sewer system owners/operators within their jurisdictions. This Order establishes minimum requirements to prevent SSOs. Although it is the State Water Board's intent that this Order be the primary regulatory mechanism for sanitary sewer systems statewide, Regional Water Boards may issue more stringent or more

prescriptive WDRs for sanitary sewer systems. Upon issuance or reissuance of a Regional Water Board's WDRs for a system subject to this Order, the Regional Water Board shall coordinate its requirements with stated requirements within this Order, to identify requirements that are more stringent, to remove requirements that are less stringent than this Order, and to provide consistency in reporting.

REGULATORY CONSIDERATIONS

12. California Water Code section 13263 provides that the State Water Board may prescribe general WDRs for a category of discharges if the State Water Board finds or determines that:

- The discharges are produced by the same or similar operations;
- The discharges involve the same or similar types of waste;
- The discharges require the same or similar treatment standards; and
- The discharges are more appropriately regulated under general discharge requirements than individual discharge requirements.

This Order establishes requirements for a class of operations, facilities, and discharges that are similar throughout the state.

13. The issuance of general WDRs to the Enrollees will:

- a) Reduce the administrative burden of issuing individual WDRs to each Enrollee;
- b) Provide for a unified statewide approach for the reporting and database tracking of SSOs;
- c) Establish consistent and uniform requirements for SSMP development and implementation;
- d) Provide statewide consistency in reporting; and
- e) Facilitate consistent enforcement for violations.

14. The beneficial uses of surface waters that can be impaired by SSOs include, but are not limited to, aquatic life, drinking water supply, body contact and non-contact recreation, and aesthetics. The beneficial uses of ground water that can be impaired include, but are not limited to, drinking water and agricultural supply. Surface and ground waters throughout the state support these uses to varying degrees.

15. The implementation of requirements set forth in this Order will ensure the reasonable protection of past, present, and probable future beneficial uses of water and the prevention of nuisance. The requirements implement the water quality control plans (Basin Plans) for each region and take into account the environmental characteristics of hydrographic units within the state. Additionally, the State Water Board has considered water quality conditions that could reasonably be achieved through the coordinated control of all factors that affect

water quality in the area, costs associated with compliance with these requirements, the need for developing housing within California, and the need to develop and use recycled water.

16. The Federal Clean Water Act largely prohibits any discharge of pollutants from a point source to waters of the United States except as authorized under an NPDES permit. In general, any point source discharge of sewage effluent to waters of the United States must comply with technology-based, secondary treatment standards, at a minimum, and any more stringent requirements necessary to meet applicable water quality standards and other requirements. Hence, the unpermitted discharge of wastewater from a sanitary sewer system to waters of the United States is illegal under the Clean Water Act. In addition, many Basin Plans adopted by the Regional Water Boards contain discharge prohibitions that apply to the discharge of untreated or partially treated wastewater. Finally, the California Water Code generally prohibits the discharge of waste to land prior to the filing of any required report of waste discharge and the subsequent issuance of either WDRs or a waiver of WDRs.
17. California Water Code section 13263 requires a water board to, after any necessary hearing, prescribe requirements as to the nature of any proposed discharge, existing discharge, or material change in an existing discharge. The requirements shall, among other things, take into consideration the need to prevent nuisance.
18. California Water Code section 13050, subdivision (m), defines nuisance as anything which meets all of the following requirements:
 - a. Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.
 - b. Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.
 - c. Occurs during, or as a result of, the treatment or disposal of wastes.
19. This Order is consistent with State Water Board Resolution No. 68-16 (Statement of Policy with Respect to Maintaining High Quality of Waters in California) in that the Order imposes conditions to prevent impacts to water quality, does not allow the degradation of water quality, will not unreasonably affect beneficial uses of water, and will not result in water quality less than prescribed in State Water Board or Regional Water Board plans and policies.
20. The action to adopt this General Order is exempt from the California Environmental Quality Act (Public Resources Code §21000 et seq.) because it is an action taken by a regulatory agency to assure the protection of the environment and the regulatory process involves procedures for protection of the environment. (Cal. Code Regs., tit. 14, §15308). In addition, the action to adopt

this Order is exempt from CEQA pursuant to Cal.Code Regs., title 14, §15301 to the extent that it applies to existing sanitary sewer collection systems that constitute “existing facilities” as that term is used in Section 15301, and §15302, to the extent that it results in the repair or replacement of existing systems involving negligible or no expansion of capacity.

21. The Fact Sheet, which is incorporated by reference in the Order, contains supplemental information that was also considered in establishing these requirements.
22. The State Water Board has notified all affected public agencies and all known interested persons of the intent to prescribe general WDRs that require Enrollees to develop SSMPs and to report all SSOs.
23. The State Water Board conducted a public hearing on February 8, 2006, to receive oral and written comments on the draft order. The State Water Board received and considered, at its May 2, 2006, meeting, additional public comments on substantial changes made to the proposed general WDRs following the February 8, 2006, public hearing. The State Water Board has considered all comments pertaining to the proposed general WDRs.

IT IS HEREBY ORDERED, that pursuant to California Water Code section 13263, the Enrollees, their agents, successors, and assigns, in order to meet the provisions contained in Division 7 of the California Water Code and regulations adopted hereunder, shall comply with the following:

A. DEFINITIONS

1. **Sanitary sewer overflow (SSO)** - Any overflow, spill, release, discharge or diversion of untreated or partially treated wastewater from a sanitary sewer system. SSOs include:
 - (i) Overflows or releases of untreated or partially treated wastewater that reach waters of the United States;
 - (ii) Overflows or releases of untreated or partially treated wastewater that do not reach waters of the United States; and
 - (iii) Wastewater backups into buildings and on private property that are caused by blockages or flow conditions within the publicly owned portion of a sanitary sewer system.
2. **Sanitary sewer system** – Any system of pipes, pump stations, sewer lines, or other conveyances, upstream of a wastewater treatment plant headworks used to collect and convey wastewater to the publicly owned treatment facility. Temporary storage and conveyance facilities (such as vaults, temporary piping, construction trenches, wet wells, impoundments, tanks, etc.) are considered to be part of the sanitary sewer system, and discharges into these temporary storage facilities are not considered to be SSOs.

For purposes of this Order, sanitary sewer systems include only those systems owned by public agencies that are comprised of more than one mile of pipes or sewer lines.

3. **Enrollee** - A federal or state agency, municipality, county, district, and other public entity that owns or operates a sanitary sewer system, as defined in the general WDRs, and that has submitted a complete and approved application for coverage under this Order.
4. **SSO Reporting System** – Online spill reporting system that is hosted, controlled, and maintained by the State Water Board. The web address for this site is <http://ciwqs.waterboards.ca.gov>. This online database is maintained on a secure site and is controlled by unique usernames and passwords.
5. **Untreated or partially treated wastewater** – Any volume of waste discharged from the sanitary sewer system upstream of a wastewater treatment plant headworks.
6. **Satellite collection system** – The portion, if any, of a sanitary sewer system owned or operated by a different public agency than the agency that owns and operates the wastewater treatment facility to which the sanitary sewer system is tributary.
7. **Nuisance** - California Water Code section 13050, subdivision (m), defines nuisance as anything which meets all of the following requirements:
 - a. Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.
 - b. Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.
 - c. Occurs during, or as a result of, the treatment or disposal of wastes.

B. APPLICATION REQUIREMENTS

1. **Deadlines for Application** – All public agencies that currently own or operate sanitary sewer systems within the State of California must apply for coverage under the general WDRs within six (6) months of the date of adoption of the general WDRs. Additionally, public agencies that acquire or assume responsibility for operating sanitary sewer systems after the date of adoption of this Order must apply for coverage under the general WDRs at least three (3) months prior to operation of those facilities.
2. **Applications under the general WDRs** – In order to apply for coverage pursuant to the general WDRs, a legally authorized representative for each agency must submit a complete application package. Within sixty (60) days of adoption of the general WDRs, State Water Board staff will send specific instructions on how to

apply for coverage under the general WDRs to all known public agencies that own sanitary sewer systems. Agencies that do not receive notice may obtain applications and instructions online on the Water Board's website.

3. Coverage under the general WDRs – Permit coverage will be in effect once a complete application package has been submitted and approved by the State Water Board's Division of Water Quality.

C. PROHIBITIONS

1. Any SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited.
2. Any SSO that results in a discharge of untreated or partially treated wastewater that creates a nuisance as defined in California Water Code Section 13050(m) is prohibited.

D. PROVISIONS

1. The Enrollee must comply with all conditions of this Order. Any noncompliance with this Order constitutes a violation of the California Water Code and is grounds for enforcement action.
2. It is the intent of the State Water Board that sanitary sewer systems be regulated in a manner consistent with the general WDRs. Nothing in the general WDRs shall be:
 - (i) Interpreted or applied in a manner inconsistent with the Federal Clean Water Act, or supersede a more specific or more stringent state or federal requirement in an existing permit, regulation, or administrative/judicial order or Consent Decree;
 - (ii) Interpreted or applied to authorize an SSO that is illegal under either the Clean Water Act, an applicable Basin Plan prohibition or water quality standard, or the California Water Code;
 - (iii) Interpreted or applied to prohibit a Regional Water Board from issuing an individual NPDES permit or WDR, superseding this general WDR, for a sanitary sewer system, authorized under the Clean Water Act or California Water Code; or
 - (iv) Interpreted or applied to supersede any more specific or more stringent WDRs or enforcement order issued by a Regional Water Board.
3. The Enrollee shall take all feasible steps to eliminate SSOs. In the event that an SSO does occur, the Enrollee shall take all feasible steps to contain and mitigate the impacts of an SSO.
4. In the event of an SSO, the Enrollee shall take all feasible steps to prevent untreated or partially treated wastewater from discharging from storm drains into

flood control channels or waters of the United States by blocking the storm drainage system and by removing the wastewater from the storm drains.

5. All SSOs must be reported in accordance with Section G of the general WDRs.
6. In any enforcement action, the State and/or Regional Water Boards will consider the appropriate factors under the duly adopted State Water Board Enforcement Policy. And, consistent with the Enforcement Policy, the State and/or Regional Water Boards must consider the Enrollee's efforts to contain, control, and mitigate SSOs when considering the California Water Code Section 13327 factors. In assessing these factors, the State and/or Regional Water Boards will also consider whether:
 - (i) The Enrollee has complied with the requirements of this Order, including requirements for reporting and developing and implementing a SSMP;
 - (ii) The Enrollee can identify the cause or likely cause of the discharge event;
 - (iii) There were no feasible alternatives to the discharge, such as temporary storage or retention of untreated wastewater, reduction of inflow and infiltration, use of adequate backup equipment, collecting and hauling of untreated wastewater to a treatment facility, or an increase in the capacity of the system as necessary to contain the design storm event identified in the SSMP. It is inappropriate to consider the lack of feasible alternatives, if the Enrollee does not implement a periodic or continuing process to identify and correct problems.
 - (iv) The discharge was exceptional, unintentional, temporary, and caused by factors beyond the reasonable control of the Enrollee;
 - (v) The discharge could have been prevented by the exercise of reasonable control described in a certified SSMP for:
 - Proper management, operation and maintenance;
 - Adequate treatment facilities, sanitary sewer system facilities, and/or components with an appropriate design capacity, to reasonably prevent SSOs (e.g., adequately enlarging treatment or collection facilities to accommodate growth, infiltration and inflow (I/I), etc.);
 - Preventive maintenance (including cleaning and fats, oils, and grease (FOG) control);
 - Installation of adequate backup equipment; and
 - Inflow and infiltration prevention and control to the extent practicable.
 - (vi) The sanitary sewer system design capacity is appropriate to reasonably prevent SSOs.

- (vii) The Enrollee took all reasonable steps to stop and mitigate the impact of the discharge as soon as possible.
7. When a sanitary sewer overflow occurs, the Enrollee shall take all feasible steps and necessary remedial actions to 1) control or limit the volume of untreated or partially treated wastewater discharged, 2) terminate the discharge, and 3) recover as much of the wastewater discharged as possible for proper disposal, including any wash down water.

The Enrollee shall implement all remedial actions to the extent they may be applicable to the discharge and not inconsistent with an emergency response plan, including the following:

- (i) Interception and rerouting of untreated or partially treated wastewater flows around the wastewater line failure;
 - (ii) Vacuum truck recovery of sanitary sewer overflows and wash down water;
 - (iii) Cleanup of debris at the overflow site;
 - (iv) System modifications to prevent another SSO at the same location;
 - (v) Adequate sampling to determine the nature and impact of the release; and
 - (vi) Adequate public notification to protect the public from exposure to the SSO.
8. The Enrollee shall properly, manage, operate, and maintain all parts of the sanitary sewer system owned or operated by the Enrollee, and shall ensure that the system operators (including employees, contractors, or other agents) are adequately trained and possess adequate knowledge, skills, and abilities.
9. The Enrollee shall allocate adequate resources for the operation, maintenance, and repair of its sanitary sewer system, by establishing a proper rate structure, accounting mechanisms, and auditing procedures to ensure an adequate measure of revenues and expenditures. These procedures must be in compliance with applicable laws and regulations and comply with generally acceptable accounting practices.
10. The Enrollee shall provide adequate capacity to convey base flows and peak flows, including flows related to wet weather events. Capacity shall meet or exceed the design criteria as defined in the Enrollee's System Evaluation and Capacity Assurance Plan for all parts of the sanitary sewer system owned or operated by the Enrollee.
11. The Enrollee shall develop and implement a written Sewer System Management Plan (SSMP) and make it available to the State and/or Regional Water Board upon request. A copy of this document must be publicly available at the Enrollee's office and/or available on the Internet. This SSMP must be approved by the Enrollee's governing board at a public meeting.

12. In accordance with the California Business and Professions Code sections 6735, 7835, and 7835.1, all engineering and geologic evaluations and judgments shall be performed by or under the direction of registered professionals competent and proficient in the fields pertinent to the required activities. Specific elements of the SSMP that require professional evaluation and judgments shall be prepared by or under the direction of appropriately qualified professionals, and shall bear the professional(s)' signature and stamp.
13. The mandatory elements of the SSMP are specified below. However, if the Enrollee believes that any element of this section is not appropriate or applicable to the Enrollee's sanitary sewer system, the SSMP program does not need to address that element. The Enrollee must justify why that element is not applicable. The SSMP must be approved by the deadlines listed in the SSMP Time Schedule below.

Sewer System Management Plan (SSMP)

- (i) **Goal:** The goal of the SSMP is to provide a plan and schedule to properly manage, operate, and maintain all parts of the sanitary sewer system. This will help reduce and prevent SSOs, as well as mitigate any SSOs that do occur.
- (ii) **Organization:** The SSMP must identify:
- (a) The name of the responsible or authorized representative as described in Section J of this Order.
 - (b) The names and telephone numbers for management, administrative, and maintenance positions responsible for implementing specific measures in the SSMP program. The SSMP must identify lines of authority through an organization chart or similar document with a narrative explanation; and
 - (c) The chain of communication for reporting SSOs, from receipt of a complaint or other information, including the person responsible for reporting SSOs to the State and Regional Water Board and other agencies if applicable (such as County Health Officer, County Environmental Health Agency, Regional Water Board, and/or State Office of Emergency Services (OES)).
- (iii) **Legal Authority:** Each Enrollee must demonstrate, through sanitary sewer system use ordinances, service agreements, or other legally binding procedures, that it possesses the necessary legal authority to:
- (a) Prevent illicit discharges into its sanitary sewer system (examples may include I/I, stormwater, chemical dumping, unauthorized debris and cut roots, etc.);

- (b) Require that sewers and connections be properly designed and constructed;
 - (c) Ensure access for maintenance, inspection, or repairs for portions of the lateral owned or maintained by the Public Agency;
 - (d) Limit the discharge of fats, oils, and grease and other debris that may cause blockages, and
 - (e) Enforce any violation of its sewer ordinances.
- (iv) **Operation and Maintenance Program.** The SSMP must include those elements listed below that are appropriate and applicable to the Enrollee's system:
- (a) Maintain an up-to-date map of the sanitary sewer system, showing all gravity line segments and manholes, pumping facilities, pressure pipes and valves, and applicable stormwater conveyance facilities;
 - (b) Describe routine preventive operation and maintenance activities by staff and contractors, including a system for scheduling regular maintenance and cleaning of the sanitary sewer system with more frequent cleaning and maintenance targeted at known problem areas. The Preventative Maintenance (PM) program should have a system to document scheduled and conducted activities, such as work orders;
 - (c) Develop a rehabilitation and replacement plan to identify and prioritize system deficiencies and implement short-term and long-term rehabilitation actions to address each deficiency. The program should include regular visual and TV inspections of manholes and sewer pipes, and a system for ranking the condition of sewer pipes and scheduling rehabilitation. Rehabilitation and replacement should focus on sewer pipes that are at risk of collapse or prone to more frequent blockages due to pipe defects. Finally, the rehabilitation and replacement plan should include a capital improvement plan that addresses proper management and protection of the infrastructure assets. The plan shall include a time schedule for implementing the short- and long-term plans plus a schedule for developing the funds needed for the capital improvement plan;
 - (d) Provide training on a regular basis for staff in sanitary sewer system operations and maintenance, and require contractors to be appropriately trained; and

- (e) Provide equipment and replacement part inventories, including identification of critical replacement parts.

(v) **Design and Performance Provisions:**

- (a) Design and construction standards and specifications for the installation of new sanitary sewer systems, pump stations and other appurtenances; and for the rehabilitation and repair of existing sanitary sewer systems; and
- (b) Procedures and standards for inspecting and testing the installation of new sewers, pumps, and other appurtenances and for rehabilitation and repair projects.

(vi) **Overflow Emergency Response Plan** - Each Enrollee shall develop and implement an overflow emergency response plan that identifies measures to protect public health and the environment. At a minimum, this plan must include the following:

- (a) Proper notification procedures so that the primary responders and regulatory agencies are informed of all SSOs in a timely manner;
- (b) A program to ensure an appropriate response to all overflows;
- (c) Procedures to ensure prompt notification to appropriate regulatory agencies and other potentially affected entities (e.g. health agencies, Regional Water Boards, water suppliers, etc.) of all SSOs that potentially affect public health or reach the waters of the State in accordance with the MRP. All SSOs shall be reported in accordance with this MRP, the California Water Code, other State Law, and other applicable Regional Water Board WDRs or NPDES permit requirements. The SSMP should identify the officials who will receive immediate notification;
- (d) Procedures to ensure that appropriate staff and contractor personnel are aware of and follow the Emergency Response Plan and are appropriately trained;
- (e) Procedures to address emergency operations, such as traffic and crowd control and other necessary response activities; and
- (f) A program to ensure that all reasonable steps are taken to contain and prevent the discharge of untreated and partially treated wastewater to waters of the United States and to minimize or correct any adverse impact on the environment resulting from the SSOs, including such accelerated or additional monitoring as may be necessary to determine the nature and impact of the discharge.

- (vii) **FOG Control Program:** Each Enrollee shall evaluate its service area to determine whether a FOG control program is needed. If an Enrollee determines that a FOG program is not needed, the Enrollee must provide justification for why it is not needed. If FOG is found to be a problem, the Enrollee must prepare and implement a FOG source control program to reduce the amount of these substances discharged to the sanitary sewer system. This plan shall include the following as appropriate:
- (a) An implementation plan and schedule for a public education outreach program that promotes proper disposal of FOG;
 - (b) A plan and schedule for the disposal of FOG generated within the sanitary sewer system service area. This may include a list of acceptable disposal facilities and/or additional facilities needed to adequately dispose of FOG generated within a sanitary sewer system service area;
 - (c) The legal authority to prohibit discharges to the system and identify measures to prevent SSOs and blockages caused by FOG;
 - (d) Requirements to install grease removal devices (such as traps or interceptors), design standards for the removal devices, maintenance requirements, BMP requirements, record keeping and reporting requirements;
 - (e) Authority to inspect grease producing facilities, enforcement authorities, and whether the Enrollee has sufficient staff to inspect and enforce the FOG ordinance;
 - (f) An identification of sanitary sewer system sections subject to FOG blockages and establishment of a cleaning maintenance schedule for each section; and
 - (g) Development and implementation of source control measures for all sources of FOG discharged to the sanitary sewer system for each section identified in (f) above.
- (viii) **System Evaluation and Capacity Assurance Plan:** The Enrollee shall prepare and implement a capital improvement plan (CIP) that will provide hydraulic capacity of key sanitary sewer system elements for dry weather peak flow conditions, as well as the appropriate design storm or wet weather event. At a minimum, the plan must include:
- (a) **Evaluation:** Actions needed to evaluate those portions of the sanitary sewer system that are experiencing or contributing to an SSO discharge caused by hydraulic deficiency. The evaluation must provide estimates of peak flows (including flows from SSOs

that escape from the system) associated with conditions similar to those causing overflow events, estimates of the capacity of key system components, hydraulic deficiencies (including components of the system with limiting capacity) and the major sources that contribute to the peak flows associated with overflow events;

- (b) **Design Criteria:** Where design criteria do not exist or are deficient, undertake the evaluation identified in (a) above to establish appropriate design criteria; and
 - (c) **Capacity Enhancement Measures:** The steps needed to establish a short- and long-term CIP to address identified hydraulic deficiencies, including prioritization, alternatives analysis, and schedules. The CIP may include increases in pipe size, I/I reduction programs, increases and redundancy in pumping capacity, and storage facilities. The CIP shall include an implementation schedule and shall identify sources of funding.
 - (d) **Schedule:** The Enrollee shall develop a schedule of completion dates for all portions of the capital improvement program developed in (a)-(c) above. This schedule shall be reviewed and updated consistent with the SSMP review and update requirements as described in Section D. 14.
- (ix) **Monitoring, Measurement, and Program Modifications:** The Enrollee shall:
- (a) Maintain relevant information that can be used to establish and prioritize appropriate SSMP activities;
 - (b) Monitor the implementation and, where appropriate, measure the effectiveness of each element of the SSMP;
 - (c) Assess the success of the preventative maintenance program;
 - (d) Update program elements, as appropriate, based on monitoring or performance evaluations; and
 - (e) Identify and illustrate SSO trends, including: frequency, location, and volume.
- (x) **SSMP Program Audits** - As part of the SSMP, the Enrollee shall conduct periodic internal audits, appropriate to the size of the system and the number of SSOs. At a minimum, these audits must occur every two years and a report must be prepared and kept on file. This audit shall focus on evaluating the effectiveness of the SSMP and the

Enrollee's compliance with the SSMP requirements identified in this subsection (D.13), including identification of any deficiencies in the SSMP and steps to correct them.

- (xi) **Communication Program** – The Enrollee shall communicate on a regular basis with the public on the development, implementation, and performance of its SSMP. The communication system shall provide the public the opportunity to provide input to the Enrollee as the program is developed and implemented.

The Enrollee shall also create a plan of communication with systems that are tributary and/or satellite to the Enrollee's sanitary sewer system.

14. Both the SSMP and the Enrollee's program to implement the SSMP must be certified by the Enrollee to be in compliance with the requirements set forth above and must be presented to the Enrollee's governing board for approval at a public meeting. The Enrollee shall certify that the SSMP, and subparts thereof, are in compliance with the general WDRs within the time frames identified in the time schedule provided in subsection D.15, below.

In order to complete this certification, the Enrollee's authorized representative must complete the certification portion in the Online SSO Database Questionnaire by checking the appropriate milestone box, printing and signing the automated form, and sending the form to:

State Water Resources Control Board
Division of Water Quality
Attn: SSO Program Manager
P.O. Box 100
Sacramento, CA 95812

The SSMP must be updated every five (5) years, and must include any significant program changes. Re-certification by the governing board of the Enrollee is required in accordance with D.14 when significant updates to the SSMP are made. To complete the re-certification process, the Enrollee shall enter the data in the Online SSO Database and mail the form to the State Water Board, as described above.

15. The Enrollee shall comply with these requirements according to the following schedule. This time schedule does not supersede existing requirements or time schedules associated with other permits or regulatory requirements.

Sewer System Management Plan Time Schedule

| <u>Task and Associated Section</u> | Completion Date | | | |
|---|--|--|--|--|
| | Population > 100,000 | Population between 100,000 and 10,000 | Population between 10,000 and 2,500 | Population < 2,500 |
| Application for Permit Coverage Section C | 6 months after WDRs Adoption | | | |
| Reporting Program Section G | 6 months after WDRs Adoption ¹ | | | |
| SSMP Development Plan and Schedule No specific Section | 9 months after WDRs Adoption ² | 12 months after WDRs Adoption ² | 15 months after WDRs Adoption ² | 18 months after WDRs Adoption ² |
| Goals and Organization Structure Section D 13 (i) & (ii) | 12 months after WDRs Adoption ² | | 18 months after WDRs Adoption ² | |
| Overflow Emergency Response Program Section D 13 (vi) | 24 months after WDRs Adoption ² | 30 months after WDRs Adoption ² | 36 months after WDRs Adoption ² | 39 months after WDRs Adoption ² |
| Legal Authority Section D 13 (iii) | | | | |
| Operation and Maintenance Program Section D 13 (iv) | | | | |
| Grease Control Program Section D 13 (vii) | 36 months after WDRs Adoption | 39 months after WDRs Adoption | 48 months after WDRs Adoption | 51 months after WDRs Adoption |
| Design and Performance Section D 13 (v) | | | | |
| System Evaluation and Capacity Assurance Plan Section D 13 (viii) | | | | |
| Final SSMP, incorporating all of the SSMP requirements Section D 13 | | | | |

1. In the event that by July 1, 2006 the Executive Director is able to execute a memorandum of agreement (MOA) with the California Water Environment Association (CWEA) or discharger representatives outlining a strategy and time schedule for CWEA or another entity to provide statewide training on the adopted monitoring program, SSO database electronic reporting, and SSMP development, consistent with this Order, then the schedule of Reporting Program Section G shall be replaced with the following schedule:

| | |
|---------------------------------------|-------------------------------|
| Reporting Program Section G | |
| Regional Boards 4, 8, and 9 | 8 months after WDRs Adoption |
| Regional Boards 1, 2, and 3 | 12 months after WDRs Adoption |
| Regional Boards 5, 6, and 7 | 16 months after WDRs Adoption |

If this MOU is not executed by July 1, 2006, the reporting program time schedule will remain six (6) months for all regions and agency size categories.

2. In the event that the Executive Director executes the MOA identified in note 1 by July 1, 2006, then the deadline for this task shall be extended by six (6) months. The time schedule identified in the MOA must be consistent with the extended time schedule provided by this note. If the MOA is not executed by July 1, 2006, the six (6) month time extension will not be granted.

E. WDRs and SSMP AVAILABILITY

1. A copy of the general WDRs and the certified SSMP shall be maintained at appropriate locations (such as the Enrollee’s offices, facilities, and/or Internet homepage) and shall be available to sanitary sewer system operating and maintenance personnel at all times.

F. ENTRY AND INSPECTION

1. The Enrollee shall allow the State or Regional Water Boards or their authorized representative, upon presentation of credentials and other documents as may be required by law, to:
 - a. Enter upon the Enrollee’s premises where a regulated facility or activity is located or conducted, or where records are kept under the conditions of this Order;
 - b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Order;

- c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order; and
- d. Sample or monitor at reasonable times, for the purposes of assuring compliance with this Order or as otherwise authorized by the California Water Code, any substances or parameters at any location.

G. GENERAL MONITORING AND REPORTING REQUIREMENTS

1. The Enrollee shall furnish to the State or Regional Water Board, within a reasonable time, any information that the State or Regional Water Board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Order. The Enrollee shall also furnish to the Executive Director of the State Water Board or Executive Officer of the applicable Regional Water Board, upon request, copies of records required to be kept by this Order.
2. The Enrollee shall comply with the attached Monitoring and Reporting Program No. 2006-0003 and future revisions thereto, as specified by the Executive Director. Monitoring results shall be reported at the intervals specified in Monitoring and Reporting Program No. 2006-0003. Unless superseded by a specific enforcement Order for a specific Enrollee, these reporting requirements are intended to replace other mandatory routine written reports associated with SSOs.
3. All Enrollees must obtain SSO Database accounts and receive a "Username" and "Password" by registering through the California Integrated Water Quality System (CIWQS). These accounts will allow controlled and secure entry into the SSO Database. Additionally, within 30days of receiving an account and prior to recording spills into the SSO Database, all Enrollees must complete the "Collection System Questionnaire", which collects pertinent information regarding a Enrollee's collection system. The "Collection System Questionnaire" must be updated at least every 12 months.
4. Pursuant to Health and Safety Code section 5411.5, any person who, without regard to intent or negligence, causes or permits any untreated wastewater or other waste to be discharged in or on any waters of the State, or discharged in or deposited where it is, or probably will be, discharged in or on any surface waters of the State, as soon as that person has knowledge of the discharge, shall immediately notify the local health officer of the discharge. Discharges of untreated or partially treated wastewater to storm drains and drainage channels, whether man-made or natural or concrete-lined, shall be reported as required above.

Any SSO greater than 1,000 gallons discharged in or on any waters of the State, or discharged in or deposited where it is, or probably will be, discharged in or on any surface waters of the State shall also be reported to the Office of Emergency Services pursuant to California Water Code section 13271.

H. CHANGE IN OWNERSHIP

1. This Order is not transferable to any person or party, except after notice to the Executive Director. The Enrollee shall submit this notice in writing at least 30 days in advance of any proposed transfer. The notice must include a written agreement between the existing and new Enrollee containing a specific date for the transfer of this Order's responsibility and coverage between the existing Enrollee and the new Enrollee. This agreement shall include an acknowledgement that the existing Enrollee is liable for violations up to the transfer date and that the new Enrollee is liable from the transfer date forward.

I. INCOMPLETE REPORTS

1. If an Enrollee becomes aware that it failed to submit any relevant facts in any report required under this Order, the Enrollee shall promptly submit such facts or information by formally amending the report in the Online SSO Database.

J. REPORT DECLARATION

1. All applications, reports, or information shall be signed and certified as follows:
 - (i) All reports required by this Order and other information required by the State or Regional Water Board shall be signed and certified by a person designated, for a municipality, state, federal or other public agency, as either a principal executive officer or ranking elected official, or by a duly authorized representative of that person, as described in paragraph (ii) of this provision. (For purposes of electronic reporting, an electronic signature and accompanying certification, which is in compliance with the Online SSO database procedures, meet this certification requirement.)
 - (ii) An individual is a duly authorized representative only if:
 - (a) The authorization is made in writing by a person described in paragraph (i) of this provision; and
 - (b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity.

K. CIVIL MONETARY REMEDIES FOR DISCHARGE VIOLATIONS

1. The California Water Code provides various enforcement options, including civil monetary remedies, for violations of this Order.
2. The California Water Code also provides that any person failing or refusing to furnish technical or monitoring program reports, as required under this Order, or

falsifying any information provided in the technical or monitoring reports is subject to civil monetary penalties.

L. SEVERABILITY

1. The provisions of this Order are severable, and if any provision of this Order, or the application of any provision of this Order to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this Order, shall not be affected thereby.
2. This order does not convey any property rights of any sort or any exclusive privileges. The requirements prescribed herein do not authorize the commission of any act causing injury to persons or property, nor protect the Enrollee from liability under federal, state or local laws, nor create a vested right for the Enrollee to continue the waste discharge.

CERTIFICATION

The undersigned Clerk to the State Water Board does hereby certify that the foregoing is a full, true, and correct copy of general WDRs duly and regularly adopted at a meeting of the State Water Resources Control Board held on May 2, 2006.

AYE: Tam M. Doduc
Gerald D. Secundy

NO: Arthur G. Baggett

ABSENT: None

ABSTAIN: None



Song Her
Clerk to the Board

STATE WATER RESOURCES CONTROL BOARD

MONITORING AND REPORTING PROGRAM NO. 2006-0003-DWQ STATEWIDE GENERAL WASTE DISCHARGE REQUIREMENTS FOR SANITARY SEWER SYSTEMS

This Monitoring and Reporting Program (MRP) establishes monitoring, record keeping, reporting and public notification requirements for Order No. 2006-2003-DWQ, "Statewide General Waste Discharge Requirements for Sanitary Sewer Systems." Revisions to this MRP may be made at any time by the Executive Director, and may include a reduction or increase in the monitoring and reporting.

A. SANITARY SEWER OVERFLOW REPORTING

SSO Categories

1. Category 1 - All discharges of sewage resulting from a failure in the Enrollee's sanitary sewer system that:
 - A. Equal or exceed 1000 gallons, or
 - B. Result in a discharge to a drainage channel and/or surface water; or
 - C. Discharge to a storm drainpipe that was not fully captured and returned to the sanitary sewer system.
2. Category 2 – All other discharges of sewage resulting from a failure in the Enrollee's sanitary sewer system.
3. Private Lateral Sewage Discharges – Sewage discharges that are caused by blockages or other problems within a privately owned lateral.

SSO Reporting Timeframes

4. Category 1 SSOs – All SSOs that meet the above criteria for Category 1 SSOs must be reported as soon as: (1) the Enrollee has knowledge of the discharge, (2) reporting is possible, and (3) reporting can be provided without substantially impeding cleanup or other emergency measures. Initial reporting of Category 1 SSOs must be reported to the Online SSO System as soon as possible but no later than 3 business days after the Enrollee is made aware of the SSO. Minimum information that must be contained in the 3-day report must include all information identified in section 9 below, except for item 9.K. A final certified report must be completed through the Online SSO System, within 15 calendar days of the conclusion of SSO response and remediation. Additional information may be added to the certified report, in the form of an attachment, at any time.

The above reporting requirements do not preclude other emergency notification requirements and timeframes mandated by other regulatory agencies (local

County Health Officers, local Director of Environmental Health, Regional Water Boards, or Office of Emergency Services (OES)) or State law.

5. Category 2 SSOs – All SSOs that meet the above criteria for Category 2 SSOs must be reported to the Online SSO Database within 30 days after the end of the calendar month in which the SSO occurs (e.g. all SSOs occurring in the month of January must be entered into the database by March 1st).
6. Private Lateral Sewage Discharges – All sewage discharges that meet the above criteria for Private Lateral sewage discharges may be reported to the Online SSO Database based upon the Enrollee's discretion. If a Private Lateral sewage discharge is recorded in the SSO Database, the Enrollee must identify the sewage discharge as occurring and caused by a private lateral, and a responsible party (other than the Enrollee) should be identified, if known.
7. If there are no SSOs during the calendar month, the Enrollee will provide, within 30 days after the end of each calendar month, a statement through the Online SSO Database certifying that there were no SSOs for the designated month.
8. In the event that the SSO Online Database is not available, the enrollee must fax all required information to the appropriate Regional Water Board office in accordance with the time schedules identified above. In such event, the Enrollee must also enter all required information into the Online SSO Database as soon as practical.

Mandatory Information to be Included in SSO Online Reporting

All Enrollees must obtain SSO Database accounts and receive a "Username" and "Password" by registering through the California Integrated Water Quality System (CIWQS). These accounts will allow controlled and secure entry into the SSO Database. Additionally, within thirty (30) days of receiving an account and prior to recording SSOs into the SSO Database, all Enrollees must complete the "Collection System Questionnaire", which collects pertinent information regarding an Enrollee's collection system. The "Collection System Questionnaire" must be updated at least every 12 months.

At a minimum, the following mandatory information must be included prior to finalizing and certifying an SSO report for each category of SSO:

9. Category 2 SSOs:
 - A. Location of SSO by entering GPS coordinates;
 - B. Applicable Regional Water Board, i.e. identify the region in which the SSO occurred;
 - C. County where SSO occurred;
 - D. Whether or not the SSO entered a drainage channel and/or surface water;
 - E. Whether or not the SSO was discharged to a storm drain pipe that was not fully captured and returned to the sanitary sewer system;

- F. Estimated SSO volume in gallons;
- G. SSO source (manhole, cleanout, etc.);
- H. SSO cause (mainline blockage, roots, etc.);
- I. Time of SSO notification or discovery;
- J. Estimated operator arrival time;
- K. SSO destination;
- L. Estimated SSO end time; and
- M. SSO Certification. Upon SSO Certification, the SSO Database will issue a Final SSO Identification (ID) Number.

10. Private Lateral Sewage Discharges:

- A. All information listed above (if applicable and known), as well as;
- B. Identification of sewage discharge as a private lateral sewage discharge; and
- C. Responsible party contact information (if known).

11. Category 1 SSOs:

- A. All information listed for Category 2 SSOs, as well as;
- B. Estimated SSO volume that reached surface water, drainage channel, or not recovered from a storm drain;
- C. Estimated SSO amount recovered;
- D. Response and corrective action taken;
- E. If samples were taken, identify which regulatory agencies received sample results (if applicable). If no samples were taken, NA must be selected.
- F. Parameters that samples were analyzed for (if applicable);
- G. Identification of whether or not health warnings were posted;
- H. Beaches impacted (if applicable). If no beach was impacted, NA must be selected;
- I. Whether or not there is an ongoing investigation;
- J. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the overflow and a schedule of major milestones for those steps;
- K. OES control number (if applicable);
- L. Date OES was called (if applicable);
- M. Time OES was called (if applicable);
- N. Identification of whether or not County Health Officers were called;
- O. Date County Health Officer was called (if applicable); and
- P. Time County Health Officer was called (if applicable).

Reporting to Other Regulatory Agencies

These reporting requirements do not preclude an Enrollee from reporting SSOs to other regulatory agencies pursuant to California state law. These reporting requirements do not replace other Regional Water Board telephone reporting requirements for SSOs.

1. The Enrollee shall report SSOs to OES, in accordance with California Water Code Section 13271.

Office of Emergency Services
Phone (800) 852-7550

2. The Enrollee shall report SSOs to County Health officials in accordance with California Health and Safety Code Section 5410 et seq.
3. The SSO database will automatically generate an e-mail notification with customized information about the SSO upon initial reporting of the SSO and final certification for all Category 1 SSOs. E-mails will be sent to the appropriate County Health Officer and/or Environmental Health Department if the county desires this information, and the appropriate Regional Water Board.

B. Record Keeping

1. Individual SSO records shall be maintained by the Enrollee for a minimum of five years from the date of the SSO. This period may be extended when requested by a Regional Water Board Executive Officer.
3. All records shall be made available for review upon State or Regional Water Board staff's request.
4. All monitoring instruments and devices that are used by the Enrollee to fulfill the prescribed monitoring and reporting program shall be properly maintained and calibrated as necessary to ensure their continued accuracy;
5. The Enrollee shall retain records of all SSOs, such as, but not limited to and when applicable:
 - a. Record of Certified report, as submitted to the online SSO database;
 - b. All original recordings for continuous monitoring instrumentation;
 - c. Service call records and complaint logs of calls received by the Enrollee;
 - d. SSO calls;
 - e. SSO records;
 - f. Steps that have been and will be taken to prevent the SSO from recurring and a schedule to implement those steps.
 - g. Work orders, work completed, and any other maintenance records from the previous 5 years which are associated with responses and investigations of system problems related to SSOs;
 - h. A list and description of complaints from customers or others from the previous 5 years; and
 - i. Documentation of performance and implementation measures for the previous 5 years.
6. If water quality samples are required by an environmental or health regulatory agency or State law, or if voluntary monitoring is conducted by the Enrollee or its agent(s), as a result of any SSO, records of monitoring information shall include:

- a. The date, exact place, and time of sampling or measurements;
- b. The individual(s) who performed the sampling or measurements;
- c. The date(s) analyses were performed;
- d. The individual(s) who performed the analyses;
- e. The analytical technique or method used; and,
- f. The results of such analyses.

C. Certification

1. All final reports must be certified by an authorized person as required by Provision J of the Order.
2. Registration of authorized individuals, who may certify reports, will be in accordance with the CIWQS' protocols for reporting.

Monitoring and Reporting Program No. 2006-0003 will become effective on the date of adoption by the State Water Board.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Board held on May 2, 2006.



Song Her
Clerk to the Board

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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: CP DEPUTY

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**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

| | |
|---------------------------|------------------------------|
| UNITED STATES OF AMERICA, |) |
| |) |
| Plaintiff, |) CIV. NO. 03-CV-1349K (POR) |
| |) |
| v. |) FINAL CONSENT DECREE |
| |) |
| CITY OF SAN DIEGO, |) |
| |) |
| Defendant. |) |

| | |
|--------------------------------------|------------------------------|
| SAN DIEGO BAYKEEPER, <u>et al.</u> , |) |
| |) |
| Plaintiffs, |) CIV. NO. 01-CV-0550B (POR) |
| |) |
| v. |) |
| |) |
| CITY OF SAN DIEGO, |) |
| |) |
| Defendant. |) |

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1 **WHEREAS**, Plaintiff, the United States of America (“United States”), by the authority of
2 the Attorney General of the United States and through its undersigned counsel, acting at the
3 request and on behalf of the Administrator of the United States Environmental Protection Agency
4 (“EPA”), filed a Complaint on July 9, 2003, seeking injunctive relief and civil penalties pursuant
5 to Section 309 of the Federal Water Pollution Control Act, as amended by the Clean Water Act
6 of 1977 and the Water Quality Act of 1987 (“CWA” or “Act”), 33 U.S.C. § 1319, naming as
7 defendant the City of San Diego, California (“the City”);
8

9 **WHEREAS**, the State of California, (“the State”) *ex rel.* the Regional Water Quality
10 Control Board, San Diego Region, (“the Regional Board”) filed a Complaint on July 11, 2003,
11 seeking injunctive relief pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, naming as
12 defendant the City;
13

14 **WHEREAS**, Plaintiffs San Diego Baykeeper (“Baykeeper”) and the Surfrider
15 Foundation (“Surfrider”) (herein collectively “Citizen Plaintiffs”) served the City; the United
16 States Attorney General; EPA; the State Water Resources Control Board; and the Regional
17 Board, with a notice of intent to file suit (“60-Day Notice”) under Sections 505(a) and (b) of the
18 CWA, 33 U.S.C. § 1365(a) and (b) on October 30, 2000, alleging that the City had in the past
19 and continues to violate Section 301(a) of the CWA, 33 U.S.C. § 1311(a), by violating the City’s
20 Sanitary and Storm Water Permits;
21

22 **WHEREAS**, on March 29, 2001, Baykeeper and Surfrider filed a Complaint against the
23 City;
24

25 **WHEREAS**, the City owns and operates a publicly-owned wastewater collection and
26 treatment system that is regulated by identical 2002 permits issued by EPA under the CWA and
27
28

1 the Regional Board under the California Porter-Cologne Water Quality Control Act, respectively,
2 NPDES permit CA0107409 (September 13, 2002), Order Number R-9-2002-0025 (April 10,
3 2002) and Order Number 2002-0013 (August 15, 2002)("the permit");
4

5 **WHEREAS**, the Plaintiffs allege that the City has violated and continues to violate the
6 CWA as a result of sanitary sewer overflows ("SSOs") from its publicly-owned treatment
7 system;

8 **WHEREAS**, EPA issued a Finding of Violation and Order pursuant to Sections 308(a)
9 and 309(a) of the CWA on April 5, 2002, setting forth a comprehensive set of requirements to be
10 met by the City to reduce and eliminate sewage spills;
11

12 **WHEREAS**, the City contends that it has upgraded the operation and maintenance of its
13 wastewater collection and treatment system to reduce unpermitted overflows and that its
14 operation and maintenance program meets or exceeds all applicable federal and state regulations;

15 **WHEREAS**, the requirements of Section VII (Compliance Actions) Paragraphs B - D, of
16 this Final Consent Decree represent infrastructure improvements and upgrades designed to
17 reduce municipal sanitary sewer overflows that will require significant capital expenditures, and
18 the City plans to pursue a combination of funding sources that may include, but are not limited
19 to, state assistance, federal assistance, bonding, and other public and private financing to assist in
20 the implementation of such improvements;
21

22 **WHEREAS**, the Mayor and Members of the City Council created a formal Citizen's
23 Clean Water Task Force to reduce SSOs and passed Resolution No. R-295587 on October 16,
24 2001, which raised sewer service rates 7.5% for each of the Fiscal Years 2002-2005 and
25 dedicated a specific portion of those increases exclusively to sewer pipe replacement and
26

1 rehabilitation;

2 **WHEREAS**, the City paid penalties of \$6,258,900 to the Regional Board from 2000 to
3 2005 for various sewage spills occurring prior to October 1, 2004 (\$2,115,500 in cash and
4 \$4,143,400 in supplemental environmental projects);
5

6 **WHEREAS**, the parties previously entered into a Partial Consent Decree and a Second
7 Partial Consent Decree to immediately implement short-term capital improvement projects and
8 operation and maintenance requirements;

9 **WHEREAS**, the Partial Consent Decree expired on June 30, 2006, and the Second
10 Partial Consent Decree expires on June 30, 2007;

11 **WHEREAS**, the City asserts it has substantially complied with the EPA's Finding of
12 Violation and Order, and the First and Second Partial Consent Decrees, and the City thereby
13 asserts that the number of wastewater overflows was reduced by approximately 77% from 2000
14 through 2006;

15 **WHEREAS**, the Mayor and City Council approved Resolution No. R-302378 on
16 February 26, 2007, increasing sewer revenues incrementally by 8.75% in each of fiscal years
17 2007 and 2008, and by 7% in each of fiscal years 2009 and 2010, primarily to fund the capital
18 improvements required by this Final Consent Decree;
19

20 **WHEREAS**, the United States, Citizen Plaintiffs, and the City (collectively referred to
21 herein as the "Settling Parties" or "Parties") agree that it is in the public interest to enter into this
22 Final Consent Decree;
23

24 **WHEREAS**, the Court finds that this Final Consent Decree is a reasonable and fair
25 settlement and that it adequately protects the public interest in accordance with the CWA.
26

1 County for a variety of recreational, esthetic, economic, and other purposes. Surfrider brought
2 this action on behalf of itself and its members.

3 C. The United States appears on behalf of EPA, a federal agency with responsibility
4 for enforcing the CWA.
5

6 D. The City is a California municipal corporation and possesses NPDES Permit No.
7 CA0107409 to discharge treated effluent from the Point Loma Metropolitan Wastewater
8 Treatment Plant. The City owns and operates a publicly owned treatment works as defined in
9 33 U.S.C. § 1292 and 40 C.F.R. § 403.3.
10

11 **IV. DEFINITIONS**

12 Unless otherwise defined herein, terms used in this Final Consent Decree shall have the
13 meaning given to those terms in the CWA, 33 U.S.C. §§ 1251-1387, and the regulations
14 promulgated thereunder. For the purposes of this Final Consent Decree, the following terms
15 shall have the meaning provided below:
16

17 “Acute Defect” means a defect that substantially increases the probability of a material
18 SSO, and includes conditions leading to imminent structural collapse or that would create
19 repeated blockages.

20 “Administrative Order” means the Finding of Violation and Order, Docket No.
21 CWA-309-9-02-17 that EPA issued to the City on April 5, 2002, pursuant to Sections 308(a) and
22 309(a) of the CWA, which was withdrawn by the EPA upon entry of the Partial Consent Decree
23 on September 13, 2005.
24

25 “Canyon Economic and Environmental Analysis” means an analysis of the feasibility of
26 relocating sewer lines out of each canyon.
27

1 "Capital Improvement Program" ("CIP") means the City's ten (10) year "rolling" sewer
2 repair, rehabilitation and replacement planning document.

3 "Collection System" means all pipes, manholes, sewer lines, pump stations, and
4 appurtenances thereto under ownership of the City that are intended to convey domestic or
5 industrial wastewater to the City's wastewater treatment plants.
6

7 "Contractor" as used in this Final Consent Decree, means the City's contractor(s) and
8 subcontractor(s), agents, assigns, successors, and duly authorized representatives of City
9 contractors.
10

11 "Director" means the Director of the EPA Region 9 Water Division.

12 "Lamping" means an inspection method in which a light source is put into a manhole and
13 a visual device, such as a mirror, is placed in an adjacent manhole to try to detect blockages in
14 the pipe.

15 "Large Diameter Pipes" means pipes in the City of San Diego's wastewater collection
16 system that are greater than fifteen (15) inches in diameter.
17

18 "Plan for Accelerated Cleaning Program" means the plan the City submitted to EPA on
19 September 27, 2002.

20 "Plan for Root Control Program" means the plan the City submitted to EPA on
21 September 27, 2002.

22 "Plan for Sewer Overflow Response and Tracking" means the plan the City submitted to
23 EPA dated October, 2003.
24

25 "Plan for Sewer Pipe Inspection and Condition Assessment" means the plan the City
26 submitted to EPA on September 27, 2002.
27

1 "Plan for Sewer Repair, Rehabilitation, and Replacement" means the plan the City
2 submitted to EPA on September 27, 2002.

3 "Plan for Fats, Oils & Grease ("FOG") Blockage Control" means the plan the City
4 submitted to EPA on September 27, 2002.

5
6 "Plan for Canyon Area Spill Elimination" means the plan the City submitted to EPA on
7 September 27, 2002.

8 "Plan for Pump Station and Force Main Spill Reduction Action" means the plan the City
9 submitted to EPA on September 27, 2002.

10 "Plan to Address Other Sanitary Sewer Overflows" means the plan the City submitted to
11 EPA on September 27, 2002.

12
13 "Plan for Capacity Assurance" means the plan the City submitted to EPA on September
14 27, 2002.

15 "Plan for System-wide Cleaning Program" means the plan the City submitted to EPA on
16 January 29, 2004.

17 "Sanitary Sewer Backup" or "SSB" is a wastewater backup into a building or solely onto
18 private property from a private lateral that is caused by a blockage or other malfunction in the
19 Collection System.

20
21 "Sanitary Sewer Overflow" or "SSO" means an overflow, spill, or release of wastewater
22 from the Collection System at any point upstream of the sewage treatment plant. For purposes of
23 this Final Consent Decree only, an SSB is an SSO.

24
25 "Section" shall mean the sections denoted by a roman numeral.

26 "Small Diameter Pipes" means pipes in the City of San Diego wastewater collection
27

1 system that are less than or equal to fifteen (15) inches in diameter.

2 "United States" shall mean the United States of America.

3
4 **V. OBJECTIVES**

5 In entering into this Final Consent Decree, the Parties intend to further the objectives set
6 forth in Section 101 of the CWA, 33 U.S.C. § 1251, to settle the claims alleged by the Plaintiffs
7 in their respective Complaints and to achieve expeditious compliance with this Final Consent
8 Decree for such purposes as eliminating spills to the extent feasible.

9
10 **VI. BINDING EFFECT**

11 A. The provisions of this Final Consent Decree shall apply to, and be binding upon
12 the City, United States, EPA, Baykeeper, and Surfrider and their successors and assigns.

13 B. The City shall give written notice, and provide a copy of this Final Consent
14 Decree to any person or entity to whom the City may transfer ownership or operation of its
15 publicly owned treatment works, including any portion of the Collection System. The City shall
16 notify the United States and EPA in writing of any successor in interest at least forty-five (45)
17 days prior to any such transfer.

18
19 C. The City shall provide a copy of this Final Consent Decree, or otherwise make it
20 available to:

21 1. Each engineering, consulting, and contracting firm to be retained to
22 perform any material activities required by this Final Consent Decree upon execution of any
23 contract relating to such work; and

24 2. Each engineering, consulting, and contracting firm already retained for
25 such purpose.
26

1 D. In an action to enforce this Final Consent Decree, the City shall not assert as a
2 defense against the Plaintiffs that any of its officers, directors, employees, agents, servants,
3 Contractors, successors or assigns are responsible for the City's failure to perform under this
4 Final Consent Decree.
5

6 **VII. COMPLIANCE ACTIONS**

7 A. The City has completed the plans listed below for the operation and maintenance
8 of its Collection System. The City shall use best efforts to implement the plans identified below
9 for the operation and maintenance of the Collection System. The City may subsequently modify
10 these Paragraph A plans to incorporate new information and to make maintenance of the
11 collection system more efficient or to make other changes that the City deems appropriate that
12 are not inconsistent with the objectives of this Final Consent Decree. The City's obligation to
13 implement these Paragraph A plans shall not be subject to enforcement under this Final Consent
14 Decree.
15

- 16 1. Plan for Sewer Overflow Response and Tracking;
- 17 2. Plan for System-wide Cleaning Program;
- 18 3. Plan for Accelerated Cleaning;
- 19 4. Plan for Root Control Program;
- 20 5. Plan for Sewer Pipe Inspection and Condition Assessment;
- 21 6. Plan for Sewer Repair, Rehabilitation and Replacement;
- 22 7. Plan for Fats, Oils & Grease ("FOG") Blockage Control;
- 23 8. Plan for Canyon Area Spill Elimination;
- 24 9. Plan for Pump Station and Force Main Spill Reduction Action;
- 25
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1 10. Plan to Address Other Sanitary Sewer Overflows; and

2 11. Plan for Capacity Assurance.

3 The City shall implement and meet the specific requirements of Paragraphs B - H below.

4 In the event of a conflict between the requirements in Paragraphs B - H below and the Paragraph
5 A plans listed above, the requirements in Paragraphs B - H below shall supercede the listed
6 plans.

7
8 B. SSO RESPONSE AND TRACKING

9 1. In addition to the information required to be reported pursuant to
10 Statewide WDR No 2006-003-DWQ and Regional Board Order R9-2007-0005, the City's
11 NPDES permit, and any other applicable local, state or federal requirement, the City's Quarterly
12 SSO reports required under Section VII (Compliance Actions) Paragraph H of this Final Consent
13 Decree shall include at a minimum:

- 14
15 a. The name of the trunk sewer (for SSOs relating to trunk sewers);
16 b. The name of the canyon (for SSOs relating to canyons);
17 c. The total SSO volume (excluding SSBs), the volume returned to
18 the system, and the volume not captured; and
19 d. The total SSB volume.

20
21 2. The City shall have crews on duty and available for response to SSOs
22 twenty-four (24) hours per day every day of the year with the exception of the ten (10) holidays
23 designated by the City. On each of the ten (10) holidays, the City shall have a duty supervisor on
24 call who is able to immediately mobilize response crews. The City shall make all reasonable
25 efforts to respond to a SSO within thirty (30) minutes of notification.
26
27

1 permitting process for sewer pipe cleaning and complete the required cleaning activities within
2 six (6) months of completing the cleaning permit process.

3
4 b. Starting April 1, 2004, the City shall clean each sewer pipe in the
5 City's two thousand five hundred thirty-eight (2,538) mile small diameter gravity collection
6 system on a minimum five (5) year frequency. For each five (5) year cleaning cycle, the City
7 may elect to exclude from cleaning up to thirty (30) miles in environmentally sensitive non-right
8 of way areas if the CCTV inspection demonstrates the pipe is clear. Starting April 1, 2004, the
9 City shall clean each sewer pipe in the City's two hundred eighty-one (281) mile large diameter
10 gravity system on a minimum five (5) year frequency unless the City can demonstrate the pipe is
11 adequately clean through a cleaning needs assessment consisting of CCTV, hydraulic
12 investigation, manhole inspection, and/or personnel entry into the sewer pipe. All miles cleaned
13 under this Paragraph may be included in the one thousand five hundred (1,500) miles of annual
14 cleaning required in Section VII (Compliance Actions) Paragraph C 2a.

15
16 c. By March 1st of each calendar year and pursuant to Section VII
17 (Compliance Actions) Paragraph G of this Final Consent Decree, the City shall submit an annual
18 report to EPA for review pursuant to Section VIII (Plan and Report Review and Approval) that
19 documents which sewers and how many miles of pipe were cleaned as part of the system-wide
20 cleaning program during the previous calendar year. The report shall distinguish between sewer
21 pipes in canyon and non-canyon areas. The annual report shall describe the status of any pipes
22 included in the thirty (30) miles described in Paragraphs a. and b. above, specify which miles
23 were included in the thirty (30) miles, and explain the basis for not cleaning any Large Diameter
24 Pipes.
25
26
27
28

1 2. ACCELERATED PREVENTIVE MAINTENANCE (ACCELERATED
 2 PM) CLEANING PROGRAM

3 a. The City shall clean a minimum of one thousand five-hundred
 4 (1,500) miles of pipe per year. Calculation of the 1,500 miles may include problem pipe
 5 segments that are cleaned more frequently than annually.
 6

7 b. To make changes to the cleaning frequency of its pipes, the City
 8 shall use a cleaning algorithm based upon SSO history and the pipe conditions observed in the
 9 field. The City shall use the following "condition findings" in its algorithm used to adjust pipe
 10 cleaning frequencies:
 11

12 c. CONDITION FINDINGS:

| Clear | Light | Medium | Heavy |
|--|--|--|---|
| No observable grease, roots, or sludge | 1.0 to 1.5 gallons of sludge, small chunks of grease, slight detection of root mass, 20 to 30 minutes to clean a line, 1 to 2 passes to clear the water. | 2 to 3 gallons of sludge, moderate chunks of grease, observable root mass, 30 minutes to clean a line, 2 to 3 passes to clear the water. | 4 or more gallons of sludge, grease, clumps of roots, more than 30 minutes to clean, more than 4 passes to clear the water. |

13
 14
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 16
 17
 18 **Note:** A "line" is a pipe segment of approximately 300 feet length between two manholes.

19 d. Based on one of the methods below, the City may determine whether
 20 to increase or decrease the pipe cleaning frequency changes.
 21

22 (I) Method 1: Software Algorithm Recommendations

23 **Cleaning Frequency Decreases:**

| Category | Findings | Frequency Step Change |
|---------------|---|---|
| 1 to 6 Month: | Clear for three consecutive cleaning cycles | A One-Step Frequency Decrease to a time interval of 3, 6, or 12 months. |

| | | |
|-----------------|---|---|
| 12 to 24 Month: | Clear for two consecutive cleaning cycles | A One-Step Frequency Decrease to a time interval of 24 or 60 months. |
| 60 Month: | N/A | Small diameter pipes on a 60 month schedule will never be cleaned less frequently. Large Diameter pipes may skip cleaning if a physical inspection per Section VII (Compliance Actions) Paragraph C 1b., determines that the pipe is clear. |

Cleaning Frequency Increases:

| Category | Findings | Frequency Step Change |
|-----------------|--|--|
| 1 to 6 Month: | Findings of either 1 Medium Or 1 Heavy during any cleaning cycle | A One-Step Frequency Increase to a time interval of 1 or 3 months. An existing 1 month time interval will not be reduced but will be transferred for further consideration under Method 2: Crew/ Supervisor Recommendations. |
| 12 to 24 Month: | Findings of either 2 Medium Or 1 Heavy during any cleaning cycle | A One-Step Frequency Increase to a time interval of 6 or 12 months. |
| 60 Month: | Findings of either 1 Medium Or 1 Heavy during any cleaning cycle | A One-Step Frequency Increase to a time interval of 24 months. |

Note: All Findings Depict Pipes that have been cleaned within +/-25% of their current frequency's scheduled cleaning date.

(ii) Method 2: Crew/ Supervisor Recommendations

Changes to cleaning frequencies for pipes that recently have been repaired, rehabilitated, or replaced shall be made in Regular Sanitary Sewer Overflow Report Tracking ("SSORT") or other appropriate meetings held by City staff. Corrective actions and appropriate frequency adjustments shall be made based upon SSO/ blockage relief cleaning findings, historical cleaning

1 data, and if available, CCTV data.

2 e. By March 1st of each year, and pursuant to Section VII

3
4 (Compliance Actions) Paragraph G of this Final Consent Decree, the City shall submit an annual
5 report to EPA for review pursuant to Section VIII (Plan and Report Review and Approval) that:

6
7 (I) documents which sewers and how many miles of pipe were cleaned as part of the Accelerated
8 PM cleaning program during the previous calendar year; (ii) includes a table containing the
9 number of miles of sewer pipes within each cleaning frequency and the number of miles
10 identified for the Repair, Rehabilitation, and Replacement Program; (iii) describes the success of
11 the program at preventing repeat blockages and sewage overflows from pipes included in the
12 Accelerated PM cleaning program; and (iv) distinguishes between pipes in canyons and pipes
13 located elsewhere.

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17 3. ROOT CONTROL PROGRAM

18 a. The City shall utilize mechanical root control to clean at least three
19 hundred fifty (350) miles of pipe each year. The 350 miles of pipe mechanically cleaned under
20 this Paragraph may be included in the cleaning miles required in Section VII (Compliance
21 Actions) Paragraph C 2a.

22
23 b. The City shall utilize chemical root control to treat at least one
24 hundred fifty (150) miles of pipe each year. Mileage chemically-treated under this Paragraph
25 may be included in the cleaning miles required in Section VII (Compliance Actions) Paragraph C
26 2a., if the chemical treatment is independent from the mechanical root cleaning miles counted in
27

1 Section VII (Compliance Actions) Paragraph C 3a. Due to advances in mechanical root control
2 processes, the City may substitute some or all of the miles of chemical root control required by
3 this Paragraph with additional mechanical root control above the miles required in Paragraph C
4 3a.

5
6 c. By March 1st of each year, the City shall submit an annual report
7 pursuant to Section VII (Compliance Actions) Paragraph G of this Final Consent Decree, to EPA
8 for review pursuant to Section VIII (Plan and Report Review and Approval) documenting how
9 many miles of pipe were subject to mechanical and chemical root control, respectively, during
10 the previous year. The report shall evaluate the success of the program, distinguish between
11 pipes in canyons and pipes located elsewhere and document any problem pipe segments or lines
12 that are referred to the Sewer Repair, Rehabilitation, and Replacement Program in Paragraph C 5
13 below.
14

15
16 4. SEWER PIPE INSPECTION AND CONDITION ASSESSMENT

17 a. The City shall inspect each gravity sewer pipe that experiences a
18 blockage leading to an SSO using CCTV or other appropriate inspection methods as soon as is
19 practicable but no later than two (2) weeks following the SSO. Lamping may not be used for
20 purposes of satisfying the obligations of this Paragraph 4.

21 b. Having completed CCTV inspection of one thousand two-hundred
22 (1,200) miles of its pipelines, all pipe installed prior to 1965, all trunk sewers prior to 1991, and
23 all high maintenance sites by June 2004, the City shall complete CCTV inspection of at least
24 forty (40) miles of its pipelines each year, focusing on pipelines in high-maintenance areas and
25 ensuring that all pipe over forty (40) years old is inspected by CCTV. The calculation of the 40
26
27

1 miles requirement may not include CCTV inspections done pursuant to Paragraph a. above or
2 Section VII (Compliance Actions) Paragraph C 1.

3 c. The City shall inspect all manholes in its collection system every
4 five (5) years, starting from September 13, 2005.

5 d. The City shall prepare condition assessment reports following
6 CCTV inspections that, at a minimum, document the following:
7

8 (I) Defects that materially threaten the structural integrity of
9 the pipe or structure;
10

11 (ii) Material defects that allow infiltration, inflow, or
12 exfiltration;
13

14 (iii) Material pipe defects, including but not limited to, cracks,
15 holes, corrosion, misaligned joints, root intrusion, sags, improper lateral taps, or other defects
16 that make the pipe or structure prone to grease, root, or debris blockages;
17

18 (iv) A rank or score of the condition of each inspected pipe or
19 structure on a sliding scale that indicates the severity of any defects found;
20

21 (v) Whether the pipe or structure requires either short or
22 long-term repair under Paragraph 5 below;
23

24 (vi) Changes to cleaning frequency as a result of the
25 assessment; and
26

1 (vii) An estimate of the expected remaining life of the pipe or
2 structure.
3

4 e. By March 1st of each year, the City shall submit an annual report
5 pursuant to Section VII (Compliance Actions) Paragraph G of this Final Consent Decree, to EPA
6 for review pursuant to Section VIII (Plan and Report Review and Approval) summarizing the
7 findings of the sewer pipe condition assessments conducted during the previous calendar year,
8 documenting any past changes in inspection methods, and differentiating between inspections
9 and condition assessments of pipes in canyons and pipes located elsewhere.
10
11

12
13 5. SEWER REPAIR, REHABILITATION, AND REPLACEMENT

14 a. The City shall repair all Acute Defects within one (1) year of
15 discovery of the defect. The City shall maintain a log listing all sewer line Acute Defects in need
16 of expeditious repair or replacement, the date the City discovered the Acute Defect, a schedule
17 for performing the repair or replacement, and the date of project completion.
18

19 b. Between January 1, 2002 and June 30, 2007, the City shall replace,
20 rehabilitate, or permanently repair two hundred (200) miles of pipeline. Beginning July 1, 2007,
21 the City shall replace, rehabilitate, or permanently repair a total of two hundred fifty (250) miles
22 prior to termination of this Final Consent Decree according to the following schedule:
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| Miles of Pipeline | Schedule |
|-------------------|----------------------|
| 30 | 7/1/2007 - 6/30/2008 |
| 45 | 7/1/2008 - 6/30/2009 |
| 45 | 7/1/2009 - 6/30/2010 |
| 45 | 7/1/2010 - 6/30/2011 |
| 45 | 7/1/2011 - 6/30/2012 |
| 40 | 7/1/2012 - 6/30/2013 |

Permanent repair means the correction of a structural defect in a manhole to manhole pipe segment such that the repaired segment has the same life expectancy as a rehabilitated pipe segment. If more than two hundred (200) miles of pipeline are replaced, rehabilitated, or permanently repaired between January 1, 2002 and June 30, 2007, the City may hold those miles in reserve to be applied, if needed, against the requirement to replace, rehabilitate, or permanently repair pipeline for any future year. If more than the specified miles of pipeline are replaced, rehabilitated, permanently repaired in one year, beginning July 1, 2007, the City may hold those miles in reserve to be applied, if needed, against the requirement to replace, rehabilitate, or permanently repair pipeline in any future year. The City shall maintain a log listing each sewer pipe and structure project completed during the previous year and the date the project was completed.

c. The City shall maintain a rolling ten (10) year CIP.

d. By March 1st of each year, the City shall submit an annual report pursuant to Section VII (Compliance Actions) Paragraph G, to EPA for review pursuant to Section VIII (Plan and Report Review and Approval) which describes all Acute Defect and long-term projects completed in the previous year pursuant to this Paragraph, distinguishes

1 requirements.

2
3 c. By March 1st of each year, the City shall submit an annual report
4 pursuant to Section VII (Compliance Actions) Paragraph G of this Final Consent Decree to EPA
5 for review pursuant to Section VIII (Plan and Report Review and Approval) documenting the
6 activities carried out under the FOG Blockage Control Program during the previous year. The
7 report shall: (i) include copies of the FSE inspection and enforcement log for the previous year,
8 and (ii) discuss budget and staffing levels for the previous and current years.
9

10 7. CANYON AREA SSO ELIMINATION

11 a. By no later than March 1, 2009, the City shall complete the Canyon
12 Economic and Environmental Analyses for the forty-two (42) canyons listed below in order to
13 evaluate the feasibility and need to relocate the sewer lines out of canyon bottoms. The
14 economic and environmental analyses shall include both quantitative and qualitative costs and
15 benefits of alternatives, weigh environmental impacts, and address stakeholder and community
16 input. The analyses shall consider the life cycle costs of the alternatives. When estimating the
17 cost to maintain sewer facilities in canyons, the cost of the increased risk of an SSO occurring
18 and the cost of the impacts to the canyon habitat resulting from necessary canyon access and
19 maintenance, as required by Section VII (Compliance Actions) Paragraphs C 1, C 2, C 3, and C 7
20 will be considered. Where the life cycle cost of redirecting flow is less than thirty-five percent
21 (35%) more than the life cycle cost of leaving the flow in place, and where environmental and
22 community interest factors indicate that flow should be redirected in whole or in part, redirection
23 shall be undertaken. Those sewers identified for relocation shall be included in the next update
24 of the City's CIP. Nothing in Section VII (Compliance Actions) of this Final Consent Decree
25
26
27

- 1 • Chollas Creek
- 2 • Chocolate (Home Avenue)
- 3 • Switzer
- 4 • Carroll (Rock Quarry)
- 5 • Alvarado
- 6 • Sorrento/Flintkote
- 7 • Roselle/Sonico
- 8 • Lopez
- 9 • Peñasquitos
- 10 • Peñasquitos Bluffs
- 11 • Rose Creek East of I-805
- 12 • Mesa College and I-805 (Onalaska)
- 13 • Black Mountain
- 14 • Shawn
- 15 • Shepherd (Santo Road)
- 16 • Woodman
- 17 • Lexington
- 18 • Washington Creek
- 19 • Highway 163 Corridor
- 20 • El Camino Real/San Dieguito Road
- 21 • Florida
- 22 • Sevan Court

- 1 • Skylark
- 2 • Rancho Mission
- 3 • 45th & Boston
- 4

5 If more than six (6) Canyon Economic and Environmental Analyses are completed in one
6 (1) year, the City may hold these analyses in reserve to be applied, if needed, against the
7 requirement to complete six (6) analyses per year in any future year.

8 c. The City shall implement the following minimum measures:

9 (I) The City shall conduct an annual visual exterior inspection
10 of each canyon area trunk sewer, including examination of each maintenance hole structure for
11 structural integrity, examination of any exposed sewer pipes, and observation of any condition in
12 the canyon area that could pose a threat to pipes or maintenance hole structures. The City shall
13 assess the environmental and other external physical factors that may lead to a structural failure.
14 Annual inspections shall include such factors as erosion, landslides, flooding, excessive plant
15 growth, and any circumstances that could affect pipe or maintenance hole structural integrity.

16 (ii) During each annual inspection of canyon trunk sewers
17 required by Subparagraph (I) above, the City shall identify all potentially vulnerable sections of
18 canyon pipelines.

19 (iii) The City shall visually inspect all potentially vulnerable
20 sections of canyon pipelines within one (1) week of every significant rainfall (over 0.5" within a
21 twenty-four (24) hour period).

22 (iv) The City shall conduct cleaning and annual maintenance of
23 each canyon area sewer pipe and maintenance hole structure, including, but not limited to,
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27

1 control of erosion that may undermine sewer pipes or maintenance hole structures, diversion of
2 channels when necessary to protect the infrastructure, rebuilding of deteriorated maintenance
3 hole structures, and the securing of maintenance hole covers to prevent vandalism as specified in
4 Section VII (Compliance Actions) Paragraph C 9b.

5
6 (v) The City shall obtain short and long-term access to each
7 canyon area sewer pipe sufficient to allow for the cleaning and annual inspection of such pipes as
8 required by this Final Consent Decree.

9
10 d. By March 1st of each year the City shall submit an annual report to
11 EPA for review pursuant to Section VII (Compliance Actions) Paragraph G of this Final Consent
12 Decree, documenting which canyon sewers were cleaned and/or inspected during the previous
13 calendar year, listing all potentially vulnerable sections of canyon pipelines identified in
14 Subparagraph c.(ii) above, describing the plans the City intends to undertake for the then current
15 year, summarizing and including the sewer relocation economic and environmental analyses
16 completed in the previous calendar year, and listing those canyons for which economic and
17 environmental analyses will be done in the current year.

18
19 8. PUMP STATION AND FORCE MAIN SSO REDUCTION ACTION
20 PROGRAM

21 a. The City shall complete the following projects by the dates
22 specified below:

1 PUMP STATIONS WITH IMPROVEMENTS UNDER DESIGN AND CONSTRUCTION:

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| Pump Station No. | Construction Completion Date | Description of Work |
|---|------------------------------|--|
| 18 (Phase II) | Dec 2008 | Mechanical & electrical upgrades ^(a) , storage tank ^(b) , and on-site generator |
| 79 | Dec 2008 | Replace pumps and motors and install properly sized storage tank ^(b) , electrical upgrades, odor control, SCADA controls and alarms, and redundant force main |
| 62 | May 2013 | Install properly sized storage tank ^(b) , odor control, and redundant force main |
| 43, 44, 46, 47, 51, 54, 60, 71, 73, 74, 75, 76, 80, 81, 82 | Jun 2013 | Replace pumps and motors; add redundant force main, storage tank ^(b) ; upgrade SCADA and odor controls |
| 84 | Jun 2013 | Replace pumps and motors; add redundant force main, storage tank ^(b) ; upgrade SCADA and odor controls |
| 52, 53, 55, 56, 57, 58 | Jun 2009 | Replace pumps and motors; upgrade SCADA & odor controls |
| 63 | Dec 2008 | Mechanical & electrical upgrades ^(a) ; add redundant force main, storage tank ^(b) , on-site generator and SCADA controls |
| 41 | Nov 2010 | Build a new PS to code (properly sized wetwell, storage tank ^(b) , odor control, on-site generator, SCADA controls and alarms, and redundant force main) then demolish old pump station |
| (a) Mechanical and Electrical Upgrades may include one or more of the following: replace pumps and motors, upgrade or add ventilation systems, add alarms, upgrade or add a sump pump, add remote control ability for certain functions (i.e., the on-site generator), and all related electrical work for the new mechanical work. | | |
| (b) All storage tanks in conjunction with in-system storage shall have a minimum of two (2) hours capacity during peak wet weather flow conditions. | | |

24 b. By March 1st of each year the City shall submit an annual report

25 pursuant to Section VII (Compliance Actions) Paragraph G of this Final Consent Decree, to EPA

26 for review pursuant to Section VIII (Plan and Report Review and Approval), documenting the

27

1 City's progress in the projects during the previous year.

2 9. PROGRAM TO ADDRESS OTHER CAUSES OF SSOS

3 a. The City shall require all Contractors working under a new
4 construction contract to have an approved SSO response plan prior to initiating work if the
5 construction work is to occur within a public right-of-way or sewer easement. All City
6 construction contracts must contain provisions that allow the City to impose penalties and/or
7 cleanup costs on any Contractor whose activities, or failure to act, result in an SSO or other
8 violation of this Final Consent Decree.
9

10 b. The City shall secure at least six hundred (600) manhole covers in
11 remote areas each year with all five thousand eight hundred (5,800) +/- covers to be secured prior
12 to termination of this Final Consent Decree. If more than 600 manhole covers in remote areas
13 are secured in one (1) year, the City may hold these secured covers in reserve to be applied, if
14 needed, against the requirement to secure 600 manhole covers per year in any future year.
15

16 c. The City shall conduct a Public Outreach Program to educate the
17 public about vandalism.
18

19 d. By March 1st of each year the City shall submit an annual report
20 pursuant to Section VII (Compliance Actions) Paragraph G of this Final Consent Decree, to EPA
21 for review pursuant to Section VIII (Plan and Report Review and Approval), documenting the
22 activities carried out under this program, summarizing the SSOs caused by Contractors or
23 vandalism, and distinguishing between SSOs in canyon and non-canyon areas.
24

1 D. COLLECTION SYSTEM CAPACITY ASSESSMENT AND ASSURANCE

2 1. Capacity Assessment

3 a. The City shall continue to use the dynamic model developed as
4 required by the U.S.A. v. City of San Diego, Case No. 88-1101-B, Stipulated Final Order for
5 Injunctive Relief, to analyze the hydraulic capacity of all trunk sewers fifteen (15) inch in
6 diameter or greater. The City will ensure that system capacity is sufficient and will continue to
7 collect flow monitoring data in both dry and wet weather and perform a dynamic modeling
8 analysis for all of the City's trunk sewers. The City will add thirteen (13) new permanent flow
9 meters on trunk sewers fifteen (15) inches in diameter or greater by December 31, 2005, at an
10 additional cost of approximately \$1.3 million. Combining the existing and additional flow
11 meters, the total monitoring coverage in flow weighted length shall exceed ninety percent (90%).
12 For the remaining trunk sewers not permanently monitored, the City will install temporary
13 meters, on a rotational basis, to monitor at least one (1) twelve (12) month continuous period for
14 each of the trunk sewers by termination of the Final Consent Decree. The data from this
15 additional metering will be incorporated into the criticality assessment for the trunk sewers. The
16 modeling analysis shall include trunk-by-trunk model calibrations based on dry weather flow
17 monitoring data and model simulations for the present, future (5-10 years), and wet weather
18 scenarios. By July 31, 2006, the City shall submit a Trunk Sewer Capacity Assessment Report
19 documenting the findings of the above mentioned modeling analysis. The report shall prioritize
20 the trunk sewers as either critical, semi-critical, or non-critical, according to the flow monitoring
21 and modeling results. The City shall update the Trunk Sewer Capacity Assessment Report on an
22 annual basis, considering new flow trends, changes in the sewer system, and other modifications.
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| | | | |
|---|----|----------------------|---------------|
| 1 | 12 | East Point Loma | December 2011 |
| | 88 | Penasquitos Views | December 2010 |
| 2 | 6 | South Mission Valley | October 2011 |
| 3 | 62 | Sunset Cliffs | July 2012 |
| | 71 | Pacific Highway | August 2012 |
| 4 | 16 | Grantville | November 2012 |
| 5 | 7 | Alvarado Phase III | November 2012 |
| | 75 | Palm City | November 2012 |
| 6 | 55 | USIU-Miramar | April 2013 |
| 7 | 67 | Balboa Avenue | May 2013 |
| | 31 | Montezuma Road | June 2013 |
| 8 | 67 | Balboa Terrace | June 2013 |
| 9 | 13 | Harbor Drive | June 2013 |

10 As a result of the ongoing capacity assessment, the City shall describe any proposed
 11 schedule or project changes/additions it seeks to make to this Paragraph with a justification and
 12 seek EPA's approval under Section VIII (Plan and Report Review and Approval) Paragraphs A
 13 and B of this Final Consent Decree.

14
 15 3. By March 1st of each year the City shall submit an annual report pursuant
 16 to Section VII (Compliance Actions) Paragraph G of this Final Consent Decree, to EPA for
 17 review pursuant to Section VIII (Plan and Report Review and Approval), detailing at a minimum,
 18 the upgrades made during the previous year and the effectiveness of those upgrades at
 19 eliminating SSOs.

20
 21 E. EXTENSION OF TIME FOR CAPITAL PROJECTS

22 1. Notwithstanding the deadlines for capital projects contained in Paragraphs
 23 C 5b., C 8a., and D 2 of this Section, the City has the right to extend any schedule for such
 24 capital projects for a period of up to one (1) year and upon written notification to EPA. Any
 25 obligation so extended must be completed prior to termination of the Final Consent Decree. The
 26 City's right to extend a schedule pursuant to this Paragraph shall not be subject to dispute
 27

1 exception of SSBs reported under Subparagraph d. above, and compare the volume, number, and
2 location of the SSOs reported under this Subparagraph to SSOs occurring since 1997; and
3

4 f. Propose new or modified plans in any area where the City has
5 materially failed to comply with the requirements of this Final Consent Decree. The plan shall
6 identify the material impact of the proposed changes on other obligations in this Section VII
7 (Compliance Actions) of this Final Consent Decree. Nothing in this Paragraph shall require the
8 City to perform any work not otherwise required in Section VII (Compliance Actions).
9

10 3. MODIFICATION OF COMPLIANCE OBLIGATIONS

11 a. Starting three (3) years after entry of this Final Consent Decree, the
12 annual report may include a request for EPA to modify the requirements specified in Paragraphs
13 C 1b., C 2a., C 2b., C 2c., C 3a., C 3b., C 6a., C 8a., C 9b., or D 2 of this Section.
14

15 b. The annual report submitted in 2007 and any annual report
16 thereafter may include a request for EPA to modify any requirement specified in Section VII
17 (Compliance Actions), Paragraphs B - C and D 2. However, except as provided in Section IX
18 (Dispute Resolution) Paragraph E 1, EPA's decision to approve or disapprove a modification
19 request under this Subparagraph shall not be subject to dispute resolution under Section IX
20 (Dispute Resolution) of this Final Consent Decree.
21

22 c. All requests for modification of the Final Consent Decree
23 requirements under Subparagraphs a. and b. above shall:

- 24 (I) Include a specific justification for the request;
25 (ii) Include proposed language modifying the existing Final
26 Consent Decree requirement; and
27

1 (iii) Be aggregated in one (1) section of the annual report.

2 However, subject to the limitations in Paragraphs a. and b. above, the City may make requests for
3 modification of the Final Consent Decree outside the annual report cycle in exigent
4 circumstances.

5
6 d. The City may request the Citizen Plaintiffs to modify the
7 requirements specified in Paragraph D 1 of this Section. In the event the Citizen Plaintiffs deny
8 such request, the City shall not have the right to contest that decision. EPA approval is not
9 necessary to modify the requirements specified in Paragraph D 1; provided, however, EPA shall
10 be provided copies of all documents as if EPA is a party.

11
12 e. Starting three (3) years after entry of this Final Consent Decree, the
13 City may request the Citizen Plaintiffs to modify the requirements specified in Paragraph D 1 of
14 this Section. In the event the Citizen Plaintiffs deny such request, the City shall have the right to
15 seek direct review in the United States District Court, and Section IX (Dispute Resolution) of this
16 Final Consent Decree shall not apply. EPA approval is not necessary to modify the requirements
17 specified in Paragraph D 1; provided, however, EPA shall be provided copies of all documents
18 and/or pleadings as if EPA is a party.

19
20 H. QUARTERLY SSO REPORTS

21 On the first day of February, May, August, and November in each calendar year in
22 which activities are conducted pursuant to this Final Consent Decree, the City shall submit a
23 summary of all SSOs occurring during the previous calendar quarter to EPA, with copies to
24 Baykeeper and Surfrider, along with the primary factors contributing to the SSOs if known. The
25 reports shall:
26
27

- 1 1. Indicate which SSOs occurred in canyons;
- 2 2. Indicate whether SSOs entered waters of the United States and, if so,
- 3 whether they entered via storm drains or other man-made conveyances; and
- 4
- 5 3. Differentiate between SSBs and all other SSOs.

6 I. OTHER REPORTS

7 Upon the request of a Plaintiff, the City shall provide any information required by
8 this Final Consent Decree or relevant to implementation or compliance with any provision of this
9 Final Consent Decree.

10 J. PACIFIC BEACH POINT STUDY

11 By June 30, 2006, the City will complete a study of Pacific Beach Point to:

- 12 1 Seek to identify the sources, if any, of bacteriological contamination; and
- 13
- 14 2. Develop recommendations to remedy the sources identified, if any. This
- 15 study shall not exceed a cost of \$250,000, and the final report shall be furnished to Baykeeper,
- 16
- 17 Surfrider, and EPA. Nothing contained in this section shall require the City to perform any work
- 18
- 19 or remediation recommended in said study.
- 20

21 **VIII. PLAN AND REPORT REVIEW AND APPROVAL**

22 A. The submittal of any plan or report required by this Final Consent Decree shall be
23 subject to EPA's review and/or approval as specified in Section VII (Compliance Actions) and
24 Paragraphs B - D below. Copies of all such plans and reports and follow-up correspondence
25 shall be provided simultaneously to Citizen Plaintiffs. The City shall respond to reasonable
26
27

1 take action by the end of the ninety (90) days, the City's submission shall be deemed pending,
2 and the City shall not modify the requirements requested until approved by EPA.

3 E. Upon EPA's approval of the submissions, any changes that supercede existing
4 requirements in Section VII (Compliance Actions) Paragraphs B - D of this Final Consent Decree
5 shall be incorporated by reference as enforceable parts of this Final Consent Decree.
6

7
8 **IX. DISPUTE RESOLUTION**

9 A. Unless otherwise expressly provided for in this Final Consent Decree, the dispute
10 resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising
11 under or with respect to this Final Consent Decree. However, the procedures set forth in this
12 Section shall not apply to:
13

14 1. Actions by the United States to enforce obligations of the City that have
15 not been disputed in accordance with this Section; or
16

17 2. Any disputes concerning the issuance, modification, revocation, or
18 reissuance of NPDES permits; or
19

20 3. Any requests made pursuant to Section VII (Compliance Actions)
21 Paragraph G 3b., d., and e.
22

23 B. A dispute shall be considered to have arisen when one (1) party sends the other
24 party a written Notice of Dispute. As used in this Paragraph, parties shall refer to the Chief,
25 CWA Compliance Office, Water Division, EPA Region 9, for the United States, the Director of
26
27

1 the Metropolitan Wastewater Department for the City, and the attorneys for Citizen Plaintiffs.

2 Any dispute that arises under or with respect to this Final Consent Decree shall in the first
3
4 instance be the subject of informal negotiations between the parties to the dispute. During the
5 informal negotiations the EPA shall identify the reasons for the non-approval. The period for
6 informal negotiations shall not exceed thirty (30) days from the time the dispute arises, unless it
7
8 is modified by written agreement of the parties.

9
10 C. 1. In the event that the Parties cannot resolve a dispute by informal
11 negotiations under the preceding Paragraph B, the City or Citizen Plaintiffs may invoke formal
12 dispute resolution procedures by providing the Director with a written statement of position on
13 the matter in dispute, including, but not limited to, any factual data, analysis or opinion
14 supporting that position and any supporting documentation relied upon by the City or Citizen
15 Plaintiffs. Such statement of position shall be provided within thirty (30) days of the end of
16 informal negotiations. If the City or Citizen Plaintiffs do not invoke formal dispute resolution
17 within thirty (30) days, EPA's position shall be binding on the City and Citizen Plaintiffs.
18
19

20
21 2. Within thirty (30) days after receipt of a City's or Citizen Plaintiffs'
22 statement of position, the Director shall provide a written Response to the City's or Citizen
23 Plaintiffs' statement of position, including, but not limited to, any factual data, analysis, or
24 opinion supporting that position and all supporting documentation relied upon by EPA. That
25
26
27
28

1 position shall be considered binding and the City and Citizen Plaintiffs shall waive any right to
2 challenge that position unless, within thirty (30) days after receipt of the Director's decision, the
3
4 City or Citizen Plaintiffs file and serve upon the United States a motion for judicial review of the
5 decision. The motion shall include a description of the matter in dispute, the efforts made by the
6
7 Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must
8
9 be resolved to ensure orderly implementation of this Final Consent Decree. The schedules
10
11 contained in the local rules for the United States District Court shall apply to the dispute;
12
13 provided, however, the United States shall have at least thirty (30) days to file a response with an
14
15 alternative proposal for resolution.

16
17 3. In proceedings on any dispute governed by this Section, the moving party
18 shall have the burden by a preponderance of the evidence to prevail in the dispute regarding
19
20 EPA's decision; provided, however, the City shall be considered the moving party with respect to
21
22 Section VII (Compliance Actions); Section VIII (Plan and Report Review and Approval);
23
24 Section XI (Stipulated Penalties); and Section XXIV (Termination).

25
26 D. The invocation of formal dispute resolution procedures under this Section shall
27
28 not extend, postpone, or affect in any way any obligation of the City under this Final Consent
Decree, not directly in dispute unless and until final resolution of the dispute so provides.
Stipulated penalties with respect to the disputed matter shall continue to accrue; provided,

1 however, that the City may argue to the Court that stipulated penalties should not run after the
2 matter has been fully briefed and submitted to the Court and provided that Plaintiffs may argue
3 the contrary. Payment shall be stayed pending resolution of the dispute. Except as provided
4 above, stipulated penalties shall accrue from the first day of non-compliance with any applicable
5 provision of this Final Consent Decree. In the event that the City does not prevail on the
6 disputed issue, stipulated penalties may be assessed as provided in Section XI (Stipulated
7 Penalties) of this Final Consent Decree.
8
9

10
11 E. Citizen Plaintiffs have the right to invoke Dispute Resolution pursuant to this
12 Section IX (Dispute Resolution) in the following circumstances:
13

14 1. Citizen Plaintiffs may challenge an EPA action approving a major
15 modification of the activities required in Section VII (Compliance Actions). The Citizen
16 Plaintiffs retain the right to dispute what constitutes a major modification. For purposes of
17 establishing what constitutes a major modification under this Subparagraph, Citizen Plaintiffs
18 shall have the burden of establishing the same based upon the arbitrary and capricious standard
19 of proof.
20
21

22
23 2. Citizen Plaintiffs may challenge an EPA action terminating the Final
24 Consent Decree pursuant to Section XXIV (Termination).
25

26 3. With respect to any motion under this Section, the Citizen Plaintiffs shall
27
28

1 be considered the moving party.

2 **X. FORCE MAJEURE**

3
4 A. "Force majeure," for purposes of this Final Consent Decree, is defined as any
5 event arising from causes beyond the control of the City, of any entity controlled by the City, or
6 of the Contractors, that delays or prevents the performance of any obligation under this Final
7 Consent Decree, despite the City's best efforts to fulfill the obligation. The requirement that the
8 City exercise "best efforts to fulfill the obligation" includes using reasonable efforts to anticipate
9 any potential force majeure event and best efforts to address the effects of any potential force
10 majeure event as it is occurring and following the potential force majeure event, such that the
11 delay is minimized to the greatest extent possible. "Force Majeure" shall not, in any event,
12 include unanticipated or increased costs associated with implementation of this Final Consent
13 Decree, changed financial circumstances, or other financial or budgetary issues.
14
15

16 B. If any event occurs or has occurred that may delay the completion of any
17 requirement of this Final Consent Decree, whether or not caused by a force majeure event, the
18 City shall notify EPA in writing, with copies to Baykeeper and Surfrider, within thirty (30) days
19 of when the City first knew, or in the exercise of reasonable diligence under the circumstances,
20 should have known of such event. The notice shall indicate whether the City claims that the
21 delay should be excused as a force majeure event. The notice shall describe in detail the basis for
22 the City's contention that it experienced a force majeure delay; the anticipated duration of the
23 delay; the precise cause or causes of the delay; all actions taken or to be taken to prevent or
24 minimize the delay; and a schedule for implementation of any measures to be taken to prevent or
25 mitigate the delay or the effect of the delay. The City shall adopt all reasonable measures to
26
27
28

1 avoid and minimize such delays. Failure to comply with the above requirements shall preclude
2 the City from asserting any claim of force majeure. The City shall be deemed to know of any
3 circumstance of which the City, any entity controlled by the City, or the Contractors knew or
4 should have known.

5
6 C. If EPA agrees that the delay or anticipated delay is attributable to a force majeure
7 event, the time for performance of the obligations under this Final Consent Decree that are
8 affected by the force majeure event will be extended by EPA in writing for such time as is
9 necessary to complete those obligations and stipulated penalties shall not be due for such period.
10 If EPA does not agree that the delay or anticipated delay has been or will be caused by a force
11 majeure event, EPA will notify the City in writing of its decision. If the City elects to invoke the
12 Dispute Resolution procedures set forth in Section IX (Dispute Resolution) of this Final Consent
13 Decree, it shall do so no later than thirty (30) days after receipt of EPA's notice. In any such
14 proceeding, the City shall have the burden of demonstrating by a preponderance of the evidence
15 that the delay or anticipated delay has been or will be caused by a force majeure event, and that
16 the duration of the delay or the extension sought was or will be warranted under the
17 circumstances. Copies of all documents under this Subparagraph shall be provided to Baykeeper
18 and Surfrider.

19
20
21 D. An extension of the time for performance of the obligations the City contends are
22 affected by the force majeure event shall not, of itself, extend the time for performance of any
23 other obligation. The City must make an individual showing of proof regarding each delayed
24 incremental step or other requirement for which an extension is sought.
25

XI. STIPULATED PENALTIES

A. The City shall pay the stipulated penalties listed below upon written demand by the United States. Pursuant to its non-reviewable enforcement discretion, the United States may waive or reduce stipulated penalties. EPA need not provide a Notice of Violation prior to assessing stipulated penalties. A copy of the demand shall be provided to Baykeeper and Surfrider.

B. COMPLIANCE MILESTONES

The City shall pay stipulated penalties for each failure to implement, achieve, or complete a requirement identified in Section VII (Compliance Actions) Paragraphs B - D of this Final Consent Decree as follows:

| <u>Period of Noncompliance</u> | <u>Penalty per Milestone Date per Day of Violation</u> |
|--------------------------------|--|
| Days 1 - 14 | \$ 750 |
| Days 15 - 28 | \$1,500 |
| Days over 28 | \$3,000 |

C. REPORTING AND PLAN SUBMISSION

The City shall pay the stipulated penalties below for each day it fails to submit or revise a report or plan required by this Final Consent Decree.

| <u>Period of Noncompliance</u> | <u>Penalty per Report/Plan per Day of Violation</u> |
|--------------------------------|---|
| Days 1 - 14 | \$ 375 |
| Days 15 - 28 | \$ 750 |
| Days over 28 | \$1,500 |

D. SANITARY SEWER OVERFLOWS

1
2 1. Except as provided in Paragraph E below, the stipulated penalties set forth
3 in this Paragraph apply to any SSO over one thousand (1,000) gallons if any portion of that spill
4 reaches navigable waters. The stipulated penalties set forth in this Paragraph apply to those
5 SSOs that occur after the entry of the Final Consent Decree. Gallons refer to the total size of the
6 overflow, spill, or release. Successive SSOs refer to the same part or reach of sewer line (from
7 manhole to manhole or from manhole to pump station), the same manhole, or the same pump
8 station under similar circumstances. The City shall provide notice of the SSO to EPA:
9

- 10 a. When required by law to be reported to the Board and/or EPA; and
11 b. When required by the reports under Section VII (Compliance
12 Actions) of this Final Consent Decree.
13

14 2. EPA may assess penalties as provided below:

- 15 a. Over one thousand (1,000) and up to ten thousand (10,000) gallons
16 (i) First successive SSO \$ 2,000
17 (ii) Second successive SSO \$ 5,000
18 (iii) Third successive SSO \$ 7,500
19 (iv) Fourth and subsequent
20 successive SSOs \$10,000
21
22 b. More than 10,000 gallons
23 (i) First successive SSO \$ 4,000
24 (ii) Second successive SSO \$10,000
25 (iii) Third successive SSO \$15,000
26
27
28

(iv) Fourth and subsequent
successive SSOs \$20,000

If the City does not reasonably estimate the size of a SSO, the SSO will be presumed to be more than ten thousand (10,000) gallons for the purpose of determining stipulated penalties.

E. OTHER PROVISIONS:

1. The City shall not be liable for stipulated penalties under Paragraph D above if the City demonstrates that it is in compliance with both the response and reporting requirements in Section VII (Compliance Actions) Paragraphs B 1 - 4, and Paragraphs C 1b.; C 2a.; C 3a.-b.; C 4a.-d., C 5a.-b.; C 6b. (i-v); C 7a.; C 7c.(i-iv); C 8a.; C 9b.; and D 2.

2. The City shall not be liable for stipulated penalties under Paragraph D above if the City demonstrates that the SSO was caused by an Act of God, vandalism, a non-City Contractor, or any act of a third party not working directly or indirectly on behalf of the City.

3. The City shall not be liable for stipulated penalties under Paragraph D above for any SSO downstream of the Marine Corps Air Station Miramar that was caused by the Marine Corps Air Station Miramar; provided however, this exception applies only if the City utilizes best efforts to reach an agreement with Marine Corps Air Station Miramar to address the potential for SSOs.

4. Payment of stipulated penalties as provided in this Section shall be in addition to any other rights or remedies, including statutory penalties, which may be available to the United States by reason of the City's failure to comply with this Final Consent Decree and all applicable federal, state, or local laws, regulations, wastewater discharge permits, and all other

1 **XIII. RIGHT OF ENTRY**

2 A. EPA, their employees, and authorized agents (including contractors and
3 subcontractors) upon presentation of valid credentials or other official authorization, shall have
4 access to enter the City's publicly-owned treatment works for the purposes of monitoring,
5 investigating, and/or verifying the City's compliance with all terms of this Final Consent Decree.
6
7 Where appropriate, EPA shall provide reasonable notice to the City.

8 B. Nothing in this Section shall be construed to limit the right of the United States to
9 enter the City's property, to require monitoring, or to obtain information pursuant to federal or
10 state law or regulation.
11

12 **XIV. NOT A PERMIT**

13 This Final Consent Decree is neither a permit nor a modification of existing permits
14 under any federal, state, or local law and in no way relieves the City of its responsibilities to
15 comply with all applicable federal, state, and local laws, and regulations.
16

17 **XV. ONGOING COMPLIANCE RESPONSIBILITIES**

18 A. This Final Consent Decree does not relieve the City of any obligation to apply for,
19 obtain and comply with the requirements of any new or existing NPDES permit or its duty to
20 comply with the CWA and any other applicable federal and state laws, regulations, and permits.
21

22 B. The United States, by its consent to the entry of this Final Consent Decree, does
23 not warrant or aver in any manner that the City's compliance with this Final Consent Decree will
24 result in compliance with the provisions of the CWA or with any NPDES permit.

25 C. Notwithstanding review or approval by the United States of any plans, reports,
26 policies, or procedures formulated pursuant to this Final Consent Decree, the City shall remain
27

1 solely responsible for any non-compliance with the terms of this Final Consent Decree, all
2 applicable permits, the CWA, and regulations promulgated thereunder.

3 **XVI. EFFECT OF SETTLEMENT**

4 A. This Final Consent Decree resolves all civil claims and claims for relief related
5 thereto against the City by EPA, Baykeeper, and Surfrider for the violations alleged in the
6 Complaints up to December 31, 2005.

8 B. This Final Consent Decree does not limit or affect the rights of Defendant or of
9 the United States against any third parties not party to this Final Consent Decree, nor does it limit
10 the rights of third parties not parties to this Final Consent Decree, against the City, except as
11 otherwise provided by law. This Final Consent Decree shall not be construed to create rights in,
12 or grant any cause of action to any third parties not parties to this Final Consent Decree.

14 C. The United States reserves all legal and equitable remedies available to enforce
15 the provisions of this Final Consent Decree, except as expressly stated herein. This Final
16 Consent Decree shall not be construed to limit the rights of the United States to obtain penalties
17 or injunctive relief under the Act or the implementing regulations, or under other federal laws,
18 regulations or permit conditions, except as expressly specified in this Section XVI (Effect of
19 Settlement). The United States further reserves all legal and equitable remedies, including but
20 not limited to injunctive relief, to address any imminent and substantial endangerment to the
21 public health or welfare or the environment.

24 D. This Final Consent Decree shall be considered "diligent prosecution" for purposes
25 of Section 1319(G)(6) of the CWA.

XVII. RESERVATION BY BAYKEEPER AND SURFRIDER

Baykeeper and Surfrider may submit comments to EPA regarding the City's annual report or the City's request for a major modification to this Final Consent Decree. Comments must be submitted within thirty (30) days of EPA's receipt of the City's annual report or the City's request for a major modification of the Final Consent Decree.

XVIII. NO ADMISSION OF LIABILITY

Neither the execution of this Final Consent Decree nor any action taken hereunder is an admission of any fact, liability, or wrongdoing of any kind regarding any of the matters addressed in the Final Consent Decree.

XIX. CERTIFICATION OF SUBMISSIONS/RECORD RETENTION

A. Any notice, report, certification, data presentation, or other document submitted by the City pursuant to this Final Consent Decree, which discusses, describes, demonstrates, or supports any finding or makes any representation concerning the City's compliance or non-compliance with any requirement(s) of this Final Consent Decree, shall contain the following certification by the City, signed by a responsible City official:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted, based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Signature
Title

1 B. The notice and reporting requirements contained in this Final Consent Decree do
2 not relieve the City of its obligations to submit any other reports or information required by
3 applicable law. Notice of a violation does not excuse the violation. Any information provided
4 under the reporting requirements of this Final Consent Decree may be admissible evidence in any
5 proceeding to enforce the provisions of this Final Consent Decree or the applicable law.
6

7 **XX. FORM OF NOTICE**

8 A. Unless otherwise specified, or as may be changed from time to time, all reports,
9 notices, or any other written communications required to be submitted under this Final Consent
10 Decree shall be sent to the respective Parties at the following addresses:
11

12 As to the City:

13 City Attorney
14 City of San Diego
15 1200 Third Avenue, Suite 1100
16 San Diego, California 92101

17 As to Surfrider and Baykeeper:

18 Executive Director
19 Surfrider Foundation
20 P.O. Box 6010
21 San Clemente, California 92674-6010

22 Surfrider Foundation
23 San Diego County Chapter
24 P.O. Box 1511
25 Solana Beach, California 92075

26 San Diego Coastkeeper
27 2825 Dewey Road, Suite 200
28 San Diego, California 92106

Rory Wicks
Marco A. Gonzalez
Coast Law Group LLP
169 Saxony Road, Suite 204
Encinitas, California 92024

1 As to the United States
2 Section Chief
3 Environmental Enforcement Section
4 Environment & Natural Resources Division
5 United States Department of Justice
6 P.O. Box 7611
7 Washington, D.C. 20044-7611

8 Gary Hess, ORC-2
9 Attorney
10 Air, Toxics, Water, and General Law Group
11 Office of Regional Counsel
12 U.S. Environmental Protection Agency
13 75 Hawthorne Street
14 San Francisco, California 94105

15 Jo Ann Cola, WTR-7
16 Water Management Division
17 U.S. Environmental Protection Agency
18 75 Hawthorne Street
19 San Francisco, California 94105

20 B. Notifications of communications shall be deemed submitted on the date they are
21 postmarked and sent by certified mail, return receipt requested, or deposited with an overnight
22 mail/delivery service.

23 **XXI. COSTS OF SUIT/COMPLIANCE MONITORING**

24 A. Citizen Plaintiffs' reasonable attorneys' fees and costs incurred through March,
25 2006, were paid by the City following entry of the Partial Consent Decree and the Second Partial
26 Consent Decree. The Parties agree that Citizen Plaintiffs are entitled to, and the City will pay, the
27 outstanding reasonable attorneys' fees and cost through the date of entry of this Final Consent
28 Decree. The Parties will attempt to reach agreement as to the appropriate amount to be paid. If
they are unable to do so, Citizen Plaintiffs may file an application with this Court for the
recovery of reasonable fees and costs within ninety days after entry of this Final Consent Decree,

1 or by such later date as set by the Court upon motion or otherwise. The City shall have not less
2 than 30 days to respond to Citizen Plaintiffs' fee application.

3 B. Nothing in this Final Consent Decree restricts or otherwise compromises Citizen
4 Plaintiffs' right to request reimbursement for attorney fees and costs incurred to monitor and to
5 enforce City's compliance with this Final Consent Decree. The City reserves any and all defenses
6 to such claims.
7

8 **XXII. MODIFICATION**

9 This Final Consent Decree contains the entire agreement of the Parties.

10 A. Any material modification to this Final Consent Decree must be with the written
11 agreement of the Parties and approval by the Court, except as provided herein.
12

13 B. Notwithstanding Paragraph A above, EPA and the City can agree in writing and
14 without Court approval to make non-material modifications to the requirements of this Final
15 Consent Decree. Baykeeper and Surfrider shall receive copies of any such modifications.
16

17 C. Notwithstanding any provision of this Final Consent Decree, the City may seek
18 modification of this Final Consent Decree pursuant to Rule 60(b) of the Federal Rules of Civil
19 Procedure.
20

21 **XXIII. CONTINUING JURISDICTION OF THE COURT**

22 The Court shall retain jurisdiction to enforce the terms and conditions of this Final
23 Consent Decree and to resolve disputes that may arise under this Final Consent Decree to the
24 extent that this Final Consent Decree provides for resolution of disputes by the Court.
25

26 **XXIV. TERMINATION**

27 A. Except as provided in Paragraph D below, this Final Consent Decree shall
28

1 terminate on July 1, 2013, or three (3) months after the City has complied with Paragraph C
2 below, whichever is later, provided that the City has complied with all of its obligations under
3 this Final Consent Decree as provided in Paragraphs B and C below.

4 B. By no earlier than October 1, 2012, the City shall certify to EPA with appropriate
5 documentation and copies to Baykeeper and Surfrider, that the City has:
6

7 1. Paid any penalties, fees, and interest due under Section XI (Stipulated
8 Penalties);

9 2. Completed two (2) cleanings of its two thousand five hundred thirty eight
10 (2,538) mile small diameter gravity collection system by April 1, 2009; cleaned an additional two
11 thousand three hundred twenty three (2,323) miles of its small diameter gravity collection system
12 and completed two (2) cleanings and/or inspections of its two hundred eighty one (281) mile
13 large diameter gravity collection system after April 1, 2004, as required by Section VII
14 (Compliance Actions) Paragraph C 1b.;

15 3. Inspected all manholes in its Collection System at least every five (5)
16 years as required by Section VII (Compliance Actions) Paragraph C 4c;

17 4. Completed all capital projects as required by Section VII (Compliance
18 Actions) Paragraphs C 8a. and D 2;

19 5. Repaired, rehabilitated, or replaced four hundred fifty (450) miles of
20 pipeline since January 1, 2002, as required by Section VII (Compliance Actions) Paragraph C
21 5b.;

22 6. Completed all canyon economic and environmental analyses as required
23 by Section VII (Compliance Actions) Paragraph C 7a.;

1 writing to the City 's certification, such dispute shall be resolved pursuant to Section IX (Dispute
2 Resolution). This Final Consent Decree shall remain in effect pending resolution of the dispute,
3 provided however, the City shall not be obligated to perform any obligation not expressly
4 contested pursuant to this Paragraph.
5

6 **XXV. SIGNATORIES**

7 A. The signatories for the Parties certify that they are fully authorized to enter into
8 the terms and conditions of this Final Consent Decree and to execute and legally bind such
9 Parties to this document.

10 B. The Parties shall identify on the attached signature pages the name, address,
11 telephone number, and fax number of one (1) agent who is authorized to accept service by mail
12 on the Party 's behalf with respect to all matters arising under or related to this Final Consent
13 Decree.
14

15 **XXVI. COUNTERPARTS**

16 This Final Consent Decree may be executed in any number of counterpart originals, each
17 of which shall be deemed to constitute an original agreement, and all of which shall constitute
18 one (1) agreement. The execution of one counterpart by any party shall have the same force and
19 effect as if that party had signed all other counterparts.
20

21 **XXVII. PUBLIC COMMENT**

22 The United States consents to the entry of this Final Consent Decree subject to the
23 publication of notice of this Final Consent Decree pursuant to 28 C.F.R. 50.7. The United States
24 reserve its rights to withdraw or withhold consent to this Final Consent Decree if public
25 comments disclose facts or considerations indicating this Final Consent Decree is inappropriate,
26
27

1 improper, or inadequate. The City agrees to entry of this Final Consent Decree without further
2 notice.

3
4 IT IS SO ORDERED this 9 day of October, 2007.

5
6
7
8 

9 HON. RUDI M. BREWSTER
10 UNITED STATES DISTRICT COURT JUDGE
11 SOUTHERN DISTRICT OF CALIFORNIA
12
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28

1 THE UNDERSIGNED PARTY enters into this Final Consent Decree in the matter of United
2 States, et al. v. City of San Diego.

3 FOR THE UNITED STATES OF AMERICA:

4
5
6
7 
8 RONALD J. TENPAS

18 July 2007
Dated

9 Acting Assistant Attorney General
10 Environment and Natural Resources
11 Division
12 United States Department of Justice
13 Washington, DC 20530

14 

July 28, 2007
Dated

15 BRADLEY R. O'BRIEN
16 Environmental Enforcement Section
17 Environment and Natural Resources
18 Division
19 United States Department of Justice
20 301 Howard Street, Suite 1050
21 San Francisco, California 94105

1 THE UNDERSIGNED PARTY enters into this Final Consent Decree in the matter of United
2 States, et al. v. City of San Diego.

3 FOR THE ENVIRONMENTAL PROTECTION AGENCY:

4
5 

6 17 JULY 2007

7 Dated

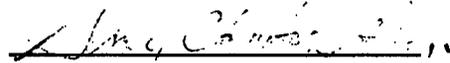
8 WAYNE NASTRI
9 Regional Administrator
10 U.S. Environmental Protection Agency
11 Region IX
12 75 Hawthorne Street
13 San Francisco, California 94105

14 

15 July 30, 2007

16 Dated

17 GRANT Y. NAKAYAMA
18 Assistant Administrator
19 Office of Enforcement & Compliance Assurance
20 U.S. Environmental Protection Agency
21 1200 Pennsylvania Avenue, NW
22 Washington, DC 20460-0001

23 

24 July 17, 2007

25 Dated

26 GARY HESS
27 Office of Regional Counsel
28 U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, California 94105

1 THE UNDERSIGNED PARTY enters into this Final Consent Decree in the matter of United
2 States, et al, v. City of San Diego.

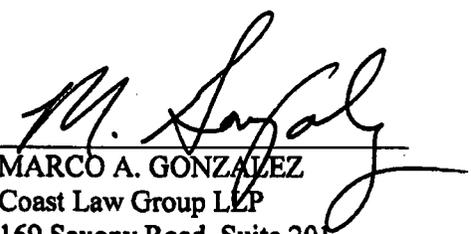
3 FOR SAN DIEGO BAYKEEPER:
4

5
6 

7 BRUCE REZNIK
8 Executive Director
9 San Diego Baykeeper

5/30/07

Dated

10
11 

12 MARCO A. GONZALEZ
13 Coast Law Group LLP
14 169 Saxony Road, Suite 201
15 Encinitas, CA 92024

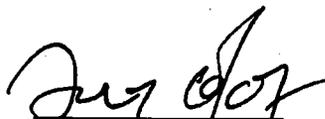
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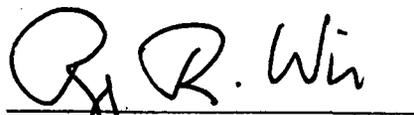
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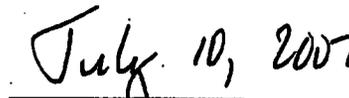
1 THE UNDERSIGNED PARTY enters into this Final Consent Decree in the matter of United
2 States, et al. v. City of San Diego.

3 FOR SURFRIDER FOUNDATION:
4

5
6 
7 _____
8 JIM MORIARTY
9 Executive Director
10 Surfrider Foundation

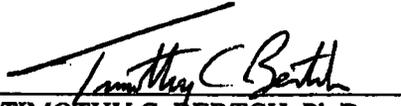

_____ Dated

11 
12 _____
13 RORY WICKS
14 Coast Law Group LLP
15 169 Saxony Road, Suite 201
16 Encinitas, CA 92024

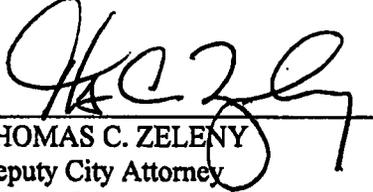
17 
18 _____ Dated

1 THE UNDERSIGNED PARTY enters into this Final Consent Decree in the matter of United
2 States, et al. v. City of San Diego.

3 FOR THE CITY OF SAN DIEGO:
4

5
6 
7 TIMOTHY C. BERTCH, Ph.D.
8 Director
9 Metropolitan Wastewater Department
10 9192 Topaz Way
11 San Diego, California 92123

05 JULY 2007
Dated

11
12 
13 THOMAS C. ZELENY
14 Deputy City Attorney
15 Office of the San Diego City Attorney
16 1200 3rd Avenue, Suite 1100
17 San Diego, California 92101

July 5, 2007
Dated

17
18 
19 JERRY SANDERS
20 Mayor
21 City of San Diego
22 202 "C" Street, 11th floor
23 San Diego, California 92101

^{JS}
7-0~~5~~⁵-07
Dated

24
25
26
27
28

1 RONALD J. TENPAS
Acting Assistant Attorney General
2 Environment & Natural Resources Division
United States Department of Justice
3 BRADLEY R. O'BRIEN - State Bar No. 189425
Environmental Enforcement Section
4 Environment and Natural Resources Division
United States Department of Justice
5 301 Howard Street, Suite 1050
San Francisco, California 94105
6 Telephone: (415) 744-6484
Facsimile: (415) 744-6476

7 KAREN P. HEWITT
United States Attorney
8 Southern District of California
San Diego County Office - Federal Office Building
9 880 Front Street, Room 6293
San Diego, California 92101
10 Telephone: (619)557-5610
Facsimile: (619)557-5782

11 Attorneys for Plaintiff United States of America

12 RORY R. WICKS
13 MARCO A. GONZALEZ
Coast Law Group, LLP
14 169 Saxony Road, Suite 204
Encinitas, California 92024
15 Telephone: (760)942-8505 ext. 102
Facsimile: (760)942-8515

16 DANIEL COOPER
Lawyers for Clean Water
17 1004 A O'Reilly Avenue
San Francisco, California 94129
18 Telephone: (415)561-2222
Facsimile: (415)561-2223

19 Attorneys for Plaintiff Surfrider Foundation and San Diego Baykeeper

20 MICHAEL J. AGUIRRE
City Attorney
21 THOMAS C. ZELENY
Deputy City Attorney
22 Office of the San Diego City Attorney
1200 3rd Avenue, Suite 1100
23 San Diego, California 92101
Telephone: (619) 533-5800
24 Facsimile: (619) 533-5856

25 Attorneys for Defendant City of San Diego

26
27
28



FOR IMMEDIATE RELEASE

October 1, 2009

**MAYOR JERRY SANDERS
FACT SHEET**

**SAN DIEGO FACES LARGE DEFICIT NEXT YEAR DUE TO
DECLINING TAX REVENUES, INVESTMENT LOSSES**

The ongoing national recession continues to have a significant impact on cities across the nation, and the city of San Diego is no exception.

Due to declining tax revenues and investment losses on Wall Street, the city of San Diego will face a projected budget deficit next year of \$179 million, Mayor Jerry Sanders announced today.

Over the past 15 months, the city of San Diego has cut \$175 million from its budget. Because of organizational and pension-related reforms, as well as \$43 million in employee compensation cuts, the city was able to protect public services.

Sanders, however, warned today that solving next year's deficit will require that cuts be made into services across the city.

"A deficit this size is so significant that we can no longer shield the public from its impacts," said Sanders. "As we begin putting together a solution to close our budget gap, we will examine every responsible alternative to cutting services. But make no mistake about it, there will be cuts and the public will feel them."

Added Sanders: "I will work with the City Council and the public throughout this process. But I can tell you that every City department – including police and fire – will be impacted, and there will be lay-offs."

Other cities are also facing budgetary challenges due to the recession. For example:

| <i>CITY</i> | <i>DEFICIT</i> |
|---------------|----------------|
| San Jose | \$169 Million |
| Los Angeles | \$403 Million |
| San Francisco | \$750 Million |

San Diego's deficit is the result of a \$67 million decline in tax and other revenues, an additional \$57 million the city will pay from the general fund into the pension system because of investment losses, and \$32 million the city will pay as part of the McGuigan legal settlement, which remedies pension underfunding by previous administrations.

"Our City Council deserves a lot of credit for the tough decisions they have made over the past year to address the economic realities we face," said Sanders, who was joined at the news conference by Council President Ben Hueso, and councilmembers Tony Young and Kevin Faulconer, who serve respectively as chair and vice chair of the city's Budget and Finance Committee. "As we look to next year, however, these decisions are only going to get tougher."

Sanders said that the sooner he and the city council can begin addressing the deficit, the less the city will have to cut from the budget.

"I've always believed that when we have tough problems, we need to step up immediately and begin working on them. These decisions will only get more difficult the longer we wait," said Sanders. "It won't be easy, but I assure you we will get through this difficult period."

Sanders will now begin working with his financial management team to develop options for meeting the city's budgetary challenges.

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CITY OF SAN DIEGO

2011–2015

Five-Year Financial Outlook
October 1st, 2009



Jerry Sanders

Mayor

Mary Lewis

Chief Financial Officer

Jay M. Goldstone

Chief Operating Officer

Nader Tirandazi

Financial Management
Director

Disclaimer:

The City files its official statements for bond offerings, audited financial statements, comprehensive annual financial reports, annual financial information, material event notices, and voluntary disclosures with the Municipal Securities Rule Making Board (MSRB). The Five Year Financial Outlook will not be filed with the MSRB and investors should not rely upon the Five Year Financial Outlook to make any investment decisions. The City will be submitting the Five Year Financial Outlook to the rating agencies, its bond insurers and other interested parties, and welcomes and encourages their careful review of this document. Readers are cautioned that the numbers presented in this document are the City's best estimate for the next five years based on facts and factors currently known to the City and do not represent actual performance. No representation is made by the City that as of the date this document is read that there is not a material difference between the City's actual performance as of such date and the financial data presented in the Five Year Financial Outlook. Certain statements in this document constitute forward-looking statements or statements which may be deemed or construed to be forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements involve, and are subject to known and unknown risks, uncertainties and other factors which could cause the City's actual results, performance (financial or operating) or achievements to differ materially from the future results, performance (financial or operating) or achievements expressed or implied by such forward-looking statements. All forward-looking statements herein are expressly qualified in their entirety by the abovementioned cautionary statement. The City disclaims any obligation to update forward-looking statements contained in this document.

EXECUTIVE SUMMARY

The City of San Diego FY 2011-2015 Five-Year Financial Outlook continues to serve as a guide for long-range fiscal planning and provides the framework for the development of the annual budget. The 2011-2015 Outlook incorporates a variety of economic assumptions and new mandated expenditure requirements that will likely influence revenues and expenditures over the next five years.

The Government Finance Officers Association (GFOA) recommends that local governments follow a financial planning process that combines the forecasts of revenues and expenditures into a single financial model over a three- to five-year period to be used as a tool to assess the long-term financial implications of current and proposed policies, programs, and assumptions in developing appropriate strategies to achieve established goals. The Financial Outlook is consistent with the GFOA best practices recommendations.

Scope of the Forecast

The City's General Fund is the primary focus of the 2011-2015 Outlook. The 2011-2015 Outlook forecasts General Fund revenues and expenditures for the next five years, beginning in FY 2011. Approximately 66 percent of the City's major revenues consist of four revenue sources: property tax, sales tax, transient occupancy tax, and franchise fees. Approximately 70 percent of the City's General Fund expenditures constitute personnel expenses.

Overview

In November 2006, the Mayor released the first Five-Year Financial Outlook for FY 2008-2012. At least once each year the Five-Year Financial Outlook is revised and provides a framework for budgetary decisions by communicating the City's fiscal priorities and outlining the City's strengths as well as any fiscal challenges.

The global economy is currently in the deepest recession since World War II, and the national economy contracted sharply in the fourth quarter of 2008 and continued into the first two quarters of 2009. This has placed severe economic pressures on the State of California and the cities throughout California, including the City of San Diego. Declining retail sales and tourism, weakened consumer confidence, and high unemployment rates in San Diego and the region are directly influencing the City's tax revenues. However, certain parts of the economy are showing indications of potential economic stabilization. The local housing market, which has contracted sharply, has been showing signs of stabilization in recent months.

The staff has revised the City's revenue and expenditure forecasts in this updated FY 2011-2015 Five-Year Financial Outlook. Negative economic factors have resulted in a downward revision to revenue projections for the FY 2010 Annual Budget and served as a base for the five-year outlook. The updated 2011-2015 Outlook identifies current and future revenue and expenditure trends. It also discusses risks and opportunities that affect fiscal decisions and the City's ability to accomplish its strategic goals over the next five-year period. These goals include:

- Meet contractual obligations and fund mandated programs
- Contribute the full payment of the Annual Required Contribution (ARC) for the City's pension system

- Maintain General Fund and other reserves according to the City's Reserve Policy
- Preserve City services to the fullest extent possible

The 2011-2015 Outlook is divided into two sections: the General Fund revenue forecast and the General Fund expenditure forecast. The General Fund revenue forecast section covers the development of the revenue projections and includes an overview of current economic trends and their affect on the City's major revenues. The General Fund expenditure forecast section outlines the expenditure forecast including future expenditure requirements and expected cost growth rates. **Attachment I** provides detailed information on General Fund revenue and expenditure forecast for FY 2011-2015 and the projected shortfall for each fiscal year.

Revenue Forecast

The General Fund revenue categories and the related background information are discussed in the revenue forecast section along with methods and assumptions affecting growth projections for each major revenue source. There are four major General Fund revenue sources: property tax, sales tax, transient occupancy tax, and franchise fees, which make up nearly 66 percent of General Fund revenue and are affected by changes in local, State, and national economic conditions. Other General Fund revenue sources such as licenses and permits, fines, forfeitures, and penalties are also influenced by economic conditions to varying degrees. A change in existing fees or the implementation of a new City Council policy for existing programs can reduce or increase projected revenue derived from fees. The General Fund revenue forecast is based on the City's FY 2010 Annual Budget adjusted for the removal of one-time revenues (See **Attachment II** for detailed information on the elimination of one-time revenues from FY 2010 budget).

Expenditure Forecast

The General Fund expenditure categories and the related background information are discussed in the expenditure forecast section along with methods and assumptions affecting growth projections for each expenditure category. The General Fund expenditure forecast is based on the City's FY 2010 Annual Budget adjusted for the removal of one-time expenditures (see **Attachment II** for one-time adjustments) and assumes inflationary rate changes for certain expense categories. The expenditure categories discussed include salaries and wages, fringe benefits, supplies and services, information technology, utilities, and equipment outlay.

The major changes from the FY 2010 Adopted Budget for revenues and expenditures as follows:

| | | |
|-----------------------------------|----|-------------|
| Revenue Change | \$ | (67) |
| Pension Payment | \$ | 57 |
| McGuigan Settlement | | 32 |
| City Hall Fire Sprinkler System | | 6 |
| Various Reserves | | 16 |
| Deferred Maintenance Debt Service | | 5 |
| Net Other Savings | | (4) |
| <hr/> | | |
| Expense Change | \$ | 112 |
| Total Change | \$ | (179) |

Additionally, there are no committed expenditures included in the Outlook other than new departmental facility costs that are outlined in this write-up. Please see **Attachment III** for information on new facilities.

Funding for significant areas that have been addressed in prior years in order to restore or preserve the fiscal health of the City and/or meet its legal operational or community obligations are also included in the Outlook. The projected increase in funding in FY 2011 above FY 2010 budgeted amounts required for these areas are \$113 million. The rationale for funding each area is discussed further in the report. Below is the summary of incremental contributions above FY 2010 budgeted levels for significant areas in FY 2011:

Incremental Contributions in FY 2011 to FY 2010 Baseline

- Funding retirement system based on projected FY 2011 Annual Required Contribution (ARC) (\$56.7 million General Fund portion, \$70.6 million Citywide)
- Funding the General Fund reserves (\$4.2 million to achieve 7.5 percent Reserve Policy target in FY 2011)
- Funding deferred maintenance and capital improvement needs (\$4.6 million)
- Funding retiree healthcare obligations/Other Post Employment Benefits (\$3.5 million)
- Funding new obligations under Storm Water Runoff Permits (no additional contribution; funding equivalent to FY 2010 budget)
- Funding the Americans with Disabilities Act obligations (no additional contribution; funding equivalent to FY 2010 budget). This is completed with capital raised from the sale of City owned real estate.
- Funding the Workers' Compensation reserves (General Fund contribution of \$4.1 million to achieve 30 percent Reserve Policy target in FY 2011)
- Funding the Public Liability reserves (\$8.1 million to achieve 25 percent Reserve Policy target in FY 2011)
- McGuigan settlement payment (\$31.7 million General Fund portion of a \$39.1 million total City payment; one-time expense in FY 2011)

Revenue Baseline Forecast

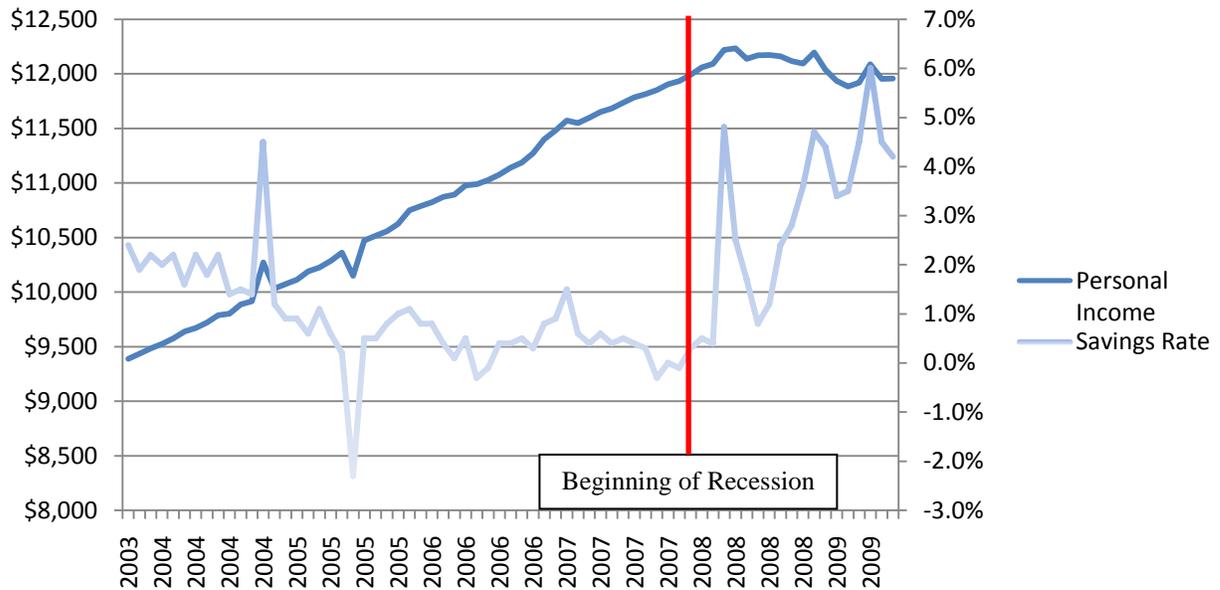
The revenue forecast combines an analysis of the economic factors driving the City's revenue base and the specific revenue sources available to the City. While San Diego's economy is increasingly diverse, the City's revenue structure has a lower tax base compared to most other large cities in California. For example, the City does not levy a utility user tax or trash collection fee and has low business license taxes. The City's revenues continue to be affected by decisions made by the State regarding the allocation of local revenue. Three of the City's largest historical General Fund revenues – property tax, sales tax, and motor vehicle license fees – are all subject to State legislative actions, and have been significantly impacted by past State budget decisions resulting in significant revenue loss to the City. In November 2004, California voters passed Proposition 1A in order to prevent the State government from taking local government resources to balance the State budget. This proposition has made changes in the law to protect local government revenues from further State intervention. Facing serious financial challenges, the State declared a state of fiscal emergency in 2009 allowing the suspension of Proposition 1A, and allowing the State to borrow local government property taxes. The impact of the State budget actions is described further in this report.

Economic Environment

The FY 2011-2015 Five-Year Financial Outlook is based on updated projections for FY 2010 for major revenue sources and expenditures that affect base year amounts to which new growth rates are applied. The economic environment on a local, State, and national level continued to decline further than was previously forecasted during FY 2009 due to an extended and expanding decline in consumer spending and tourism. Based on actual performance of these economic indicators up to the beginning of FY 2010, the base year revenue amount for the General Fund was adjusted to reflect updated forecasts formed with current economic information and expectations for a delayed economic recovery.

The continued decline in consumer spending, which accounts for 70 percent of United States' GDP, can be attributed to increasing unemployment, declining per capita income, and an increased savings rate due to lack of confidence in an economic recovery in the short term. The graph below illustrates the stagnation in personal income and the individual savings rate change since December 2003. National personal income has averaged 0.5 percent growth per month from 2003 to December 2007 (beginning of the current recession) and has subsequently dropped to 0 percent average growth per month until July 2009; while the average consumer savings rate has increased to over 4 percent currently from a 0 percent savings rate at the beginning of the recession. All of the above factors, along with stagnation of personal income, the increase in the savings rate, and a decrease in consumer spending have resulted in reduced revenues for the City, primarily in sales tax and transient occupancy tax (TOT).

NATIONAL PERSONAL INCOME & SAVINGS RATE
(\$ in billions)



The increasing unemployment rate in California and the City has also placed an additional economic strain on revenue sources. The State unemployment rate as of August 2009 has risen to 12.2 percent from 7.6 percent from August 2008, an increase of 61 percent. Comparatively, the City’s current unemployment rate is 10.4 percent, and has increased from 6.4 percent, or 63 percent from August 2008 compiled statistics. These compiled statistics do not reflect the entire health of the local and State employment situation due to the number of under-employed workers in addition to the number of people who have stopped looking for work and have been eliminated from the worker pool (officially termed “discouraged workers”). The under-employed category of workers includes those who have high levels of skills who are currently in low wage jobs, and those who can only find part-time work. While not compiled on a State or local level, the variance between the official total United States unemployment rate of 9.7 percent and the unemployment rate when accounting for the under-employed and discouraged workers, 16.8 percent, illustrates the true impact of the current employment market on the state of the economy. For a rebound in consumer spending to occur, both the number of unemployed and under-employed must decrease to create a sustainable level of spending and investment.

Fiscal Year 2009 Results

The economic environment on a local, State, and national level continued to decline further than was previously forecasted during FY 2009 due to a protracted decline in consumer spending, increasing unemployment rates, and other economic drivers signaling a continued economic slump. This trend created a variance between expected revenues for FY 2009 and actual revenue received in major and departmental revenues for the General Fund. The variance between projected versus actual revenue receipts in FY 2009 contributed to the net negative impact of \$13.2 million between actual revenues and expenditures, including FY 2009 encumbrances.

The fourth quarter forecasts for FY 2009 projected a decline in sales tax of 9 percent as compared to the prior year's comparable quarter, where actual results for the quarter showed a 15 percent decline. Additionally, transient occupancy tax was forecasted to decline 5.3 percent in the final quarter of FY 2009, with actual results showing a 16.5 percent decline over the comparable quarter from the prior fiscal year. These variances from projected results in actual receipts in the fourth quarter affected projections for major General Fund revenues for the first quarter of FY 2010 and the overall projected revenue growth for the General Fund in FY 2010. On the positive side, actual property tax receipts in FY 2009 exceeded the year-end forecasted results by 0.8 percent as compared to projections.

Based on the lower than expected revenues in sales and transient occupancy tax in FY 2009, and the continued revenue decline in some of the City's major revenues into the first quarter of FY 2010, the budgeted major General Fund revenues have been reviewed to reflect the current economic environment. New forecasts may be prepared as updated economic information is received in FY 2010. The decline in sales and transient occupancy tax experienced in FY 2009 and the more negative growth rates in the first quarter of FY 2010 may result in revised annual growth rates for these major revenues.

The current forecasts used in the FY 2011-2015 Five-Year Financial Outlook for property tax, sales tax, and TOT have created a variance between the FY 2010 Adopted Budget and the current FY 2010 baseline used in forecasting the upcoming five-year financial performance. These adjustments to major revenues are as outlined in the following table:

| Major Revenue (in millions) | FY10 Adopted Budget | FY 10 Revised Projection | FY 10 Change in Revenue |
|--------------------------------|---------------------|--------------------------|----------------------------|
| Property Tax | \$382.6 | \$391.6 | \$9.0 |
| Sales Tax | \$210.1 | \$185.4 | (\$25.0) |
| TOT | \$75.9 | \$71.9 | (\$4.0) |
| Safety Sales Tax | \$7.1 | \$6.5 | (\$1.0) |
| TOTAL | \$675.7 | \$662.1 | (\$21.0) |

In addition to adjustments made to major revenue sources, one-time revenues and expenses totaling \$39.2 million and \$9.6 million, respectively, were removed from the FY 2010 Adopted Budget revenue base to adjust for non-recurring items (See Attachment II).

State of California Budget Impacts

California's Proposition 1B (known as the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act), passed in 2006 for the improvement of roadway infrastructure throughout the State, has allocated and distributed \$550.0 million to cities throughout the State. The second round of disbursements was expected to occur in FY 2010; however, with the deterioration in the national credit markets, the \$187.0 million in Proposition 1B bonds that were to be issued by the State to raise the monies for this distribution were not sold. These bonds that were attempted to be sold on the open market in December 2008 faced difficulties due to California's budget shortfalls and downgraded credit ratings. The State is expected to issue the bonds once the State's credit rating and the overall debt market improves. The City of San Diego does not expect any Proposition 1B funds from this \$187 million second round of State distributions in FY 2010; however, the City may receive Proposition 1B funds in FY 2011.

The fiscal measures the State of California recently adopted in an attempt to address the \$26 billion budgetary shortfall have placed additional pressure on the City's FY 2010 financial outlook. The fiscal measures include an estimated \$1.9 billion in property tax revenues borrowed from local municipalities and \$1.7 billion in funds that are being taken away from redevelopment agencies throughout the State. More specifically, the State of California's budget borrows an estimated \$36 million in property tax revenue that is due to the City for FY 2010 to aid in addressing the State's budgetary shortfall. The property tax revenues that are being appropriated from the City will be secured by the State with a promissory note that will specify repayment of the funds, plus a designated interest rate.

The California Statewide Communities Development Authority (CSCDA) has introduced a securitization program to collateralize participating governments' notes payable from the State of California to repay these lost revenues. The State Senate and Assembly will be reconvened for a special session to finalize details and to allow the CSCDA to operate the securitization program under SB67 and AB185. This will allow the CSCDA to acquire the full interest from local governments for the State notes payable and to borrow funds on a tax-exempt basis to pay local governments. After the State Assembly and Senate ratify their respective bills, each local government's City Council must approve the purchase and sale agreement as set forth by CSCDA before November 6, 2009 to transfer their interest to CSCDA. Two equal payments from the CSCDA on January 15, 2010 and May 3, 2010 will then be made to all participants to repay the full amount of revenues taken from each local government.

Additionally, the State has communicated the potential need to take gas tax revenues from local governments to aid in balancing a potentially expanding projected revenue shortfall for the State of California. As of the time this forecast was prepared, no clear indication had been given by the State on whether these revenues would be appropriated. The City has budgeted \$24.3 million in gas tax revenues in FY 2010. If these revenues are taken by the State, the projected General Fund deficit will increase by approximately \$24.3 million in FY 2011.

GENERAL FUND REVENUES

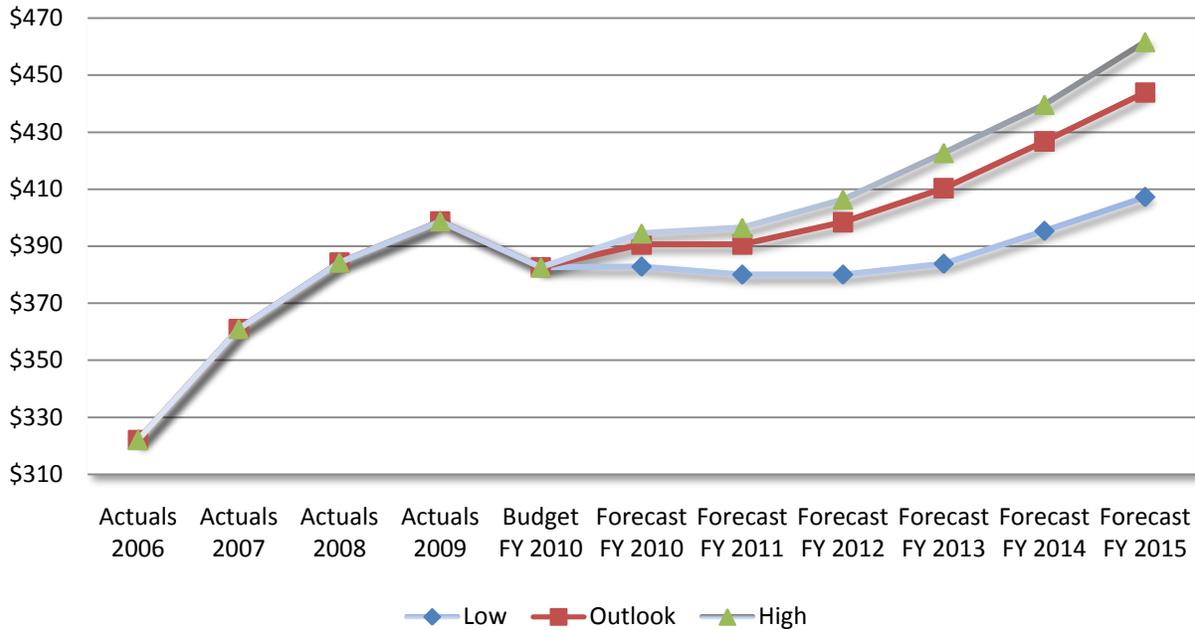
The following section will provide details of major and departmental revenue sources in summary for the FY 2010 revenue base in addition to currently forecasted growth rates used in the Five-Year Financial Outlook.

Property Tax

(\$ in millions)

| UNAUDITED ACTUALS 2009 | BUDGET 2010 | FORECAST 2010 | FORECAST 2011 | FORECAST 2012 | FORECAST 2013 | FORECAST 2014 | FORECAST 2015 |
|---------------------------------------|------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| \$398.70 | \$382.60 | \$391.60 | \$391.60 | \$399.40 | \$411.40 | \$427.80 | \$444.90 |
| - | - | - | 0.0% growth | 2.0% growth | 3.0% growth | 4.0% growth | 4.0% growth |

PROPERTY TAX REVENUE FORECAST (\$ in millions)



*FY 2009 unaudited actuals

Based on the previously outlined revision in property tax revenue for the base year forecast used in the Five-Year Financial Outlook, the total property tax revenue forecasted for FY 2010 is \$390.6 million; a decrease of \$8 million or 2percent from the estimated actual receipts from FY 2009. This is due in part to a large number of negative reassessment applications granted by the County of San Diego Assessor’s Office during FY 2008 and 2009. According to the Assessor’s Office, over 100,000 total reassessment applications were received during the past two fiscal years, driving down gross assessed value in the County and City. The FY 2010 forecasted property tax revenue amount for the City is based on the estimated decline in Citywide assessed valuation provided by the County Assessor’s Office which may be adjusted upward at his discretion when the current market value of the property recovers beyond the depressed assessed value.

There is 0 percent growth forecasted in property tax revenue in FY 2011 due to the forecasted offsetting commercial and residential markets. Economists estimate that the City’s residential market will experience stabilization in average home prices and a corresponding recovery in assessed valuation in FY 2011; however, this estimated recovery in assessed values of residential properties is forecasted to be tempered by the delayed effect of the current recession on the commercial real estate market. Currently, the decline in consumer spending is leading to reduced revenues for service providers, retailers, and other commercial businesses. This decrease in revenue is causing retailers to lower inventories, reduce staffing, and close stores or cease expansion to save costs. The decline in market value of commercial properties is forecasted to lead to a decline in assessed value of commercial properties and is expected to offset any potential gain in revenue from the forecasted strengthening in the local residential market.

Consumer spending is anticipated to stabilize in late FY 2010 and recover in FY 2011, and property tax revenue is expected to recover in FY 2012. Property tax revenue in the Outlook is forecasted to return to a 2 percent growth rate in FY 2012, 3 percent in FY 2013, and 4 percent in FY 2014-2015. These growth rates are predicated on the assumption that the large increases in residential and commercial assessed value during the late 1990s and early 2000s will not return during the forecasted five-year period.

PROPERTY TAX REVENUE SENSITIVITY ANALYSIS

| SCENARIO | \$ Revenue in Millions | FORECAST 2010 | FORECAST 2011 | FORECAST 2012 | FORECAST 2013 | FORECAST 2014 | FORECAST 2015 |
|----------|------------------------|---------------|---------------|---------------|---------------|---------------|---------------|
| LOW | \$ REVENUE | \$385.8 | \$380.0 | \$380.0 | \$383.8 | \$395.3 | \$407.2 |
| | % GROWTH | - | -1.5% | 0.0% | 1.0% | 3.0% | 3.0% |
| OUTLOOK | \$ REVENUE | \$391.6 | \$391.6 | \$399.4 | \$411.4 | \$427.8 | \$444.9 |
| | % GROWTH | - | 0.0% | 2.0% | 3.0% | 4.0% | 4.0% |
| HIGH | \$ REVENUE | \$394.5 | \$396.5 | \$406.4 | \$422.7 | \$439.6 | \$461.6 |
| | % GROWTH | - | 0.5% | 2.5% | 4.0% | 4.0% | 5.0% |

The property tax revenue sensitivity analysis is based on the rate of recovery in assessed value of residential and commercial properties, as determined by the County Assessor’s Office, among other factors. As previously mentioned, the Outlook includes an increase in assessed values of residential properties in FY 2011, which will provide an offset to the forecasted decline in commercial assessed valuation; however, if the forecasted increase in residential value does not occur, a continued drop in property tax revenue is possible. The low forecast is based on flat growth in FY 2011 and a slow recovery in the remaining five-year forecast period. The high scenario is based on the assumption that the growth in residential assessed values will exceed the decline in commercial values (since residential properties comprise the great majority of the City’s total assessed valuation), providing additional revenue growth in FY 2011. The remaining five-year forecast is based on the assumption that property tax revenue will grow at a faster rate than in the outlook scenario, ending at 5 percent growth in FY 2015.

Property Transfer Tax

(\$ in millions)

| UNAUDITED ACTUALS 2009 | BUDGET 2010 | FORECAST 2011 | FORECAST 2012 | FORECAST 2013 | FORECAST 2014 | FORECAST 2015 |
|------------------------|-------------|---------------|---------------|---------------|---------------|---------------|
| \$4.6 | \$4.5 | \$4.9 | \$5.2 | \$5.4 | \$5.6 | \$5.8 |
| - | - | 8.0% growth | 6.0% growth | 4.0% growth | 4.0% growth | 4.0% growth |

The FY 2010 property transfer tax budget is \$4.5 million, or a 1.8 percent decrease from the estimated actual receipts from FY 2009. The budgeted property transfer tax revenue for FY 2010

was based on the assumption that average home sale prices in the City will continue to stabilize or increase marginally (as experienced during the first six months of calendar year 2009) throughout FY 2010. The forecasted growth rate in the average home price will continue to be marginal during the fiscal year due to the number of available foreclosed properties on the market and the difficulty in obtaining financing. Moreover, the economic crisis has slowed both the number of real estate sales transactions and the market price of homes, which in turn, has materially affected property transfer tax.

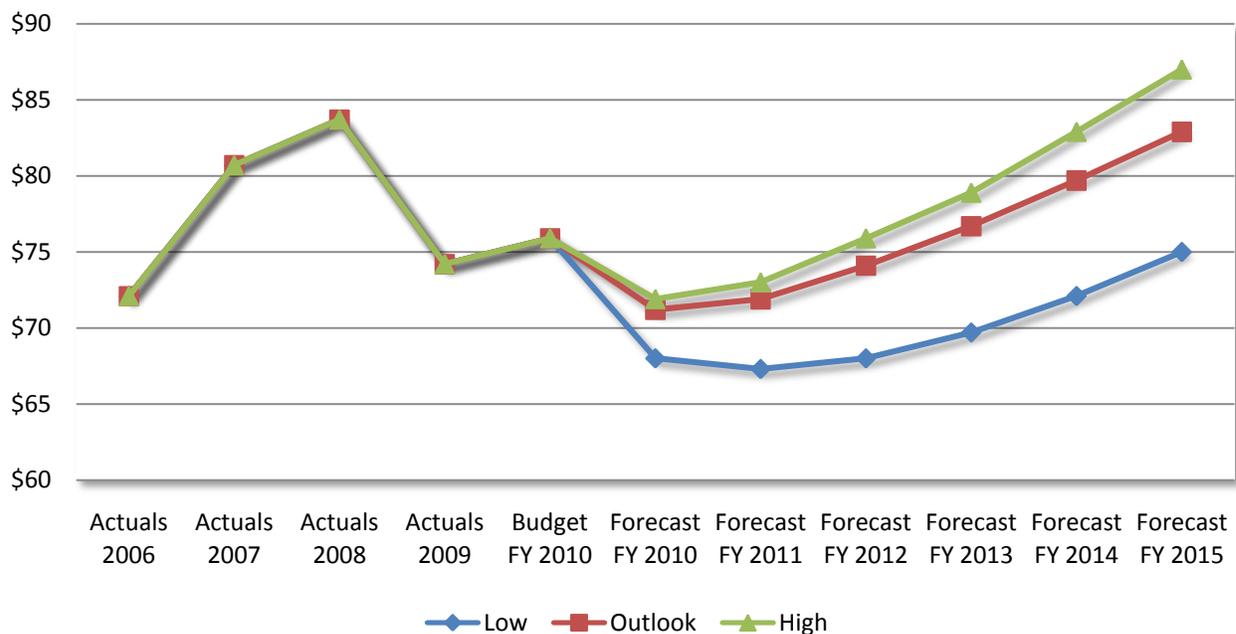
Property transfer tax revenue is forecasted to experience a 1.8 percent decline in FY 2010, an 8 percent growth in FY 2011, 6 percent growth in FY 2012; and 4 percent growth in FY 2013-2015. The high growth rate in FY 2011 is due to the expectation that home prices will rise at an increasing rate in FY 2011 as home sales increase. This increase in home sales is forecasted to be in line with an overall economic recovery. The forecasted declining growth rate is based on the assumption that buying will temper as prices increase year-over-year.

Transient Occupancy Tax

(\$ in millions)

| TOT | UNAUDITED ACTUALS 2009 | BUDGET 2010 | FORECAST 2010 | FORECAST 2011 | FORECAST 2012 | FORECAST 2013 | FORECAST 2014 | FORECAST 2015 |
|--------------|------------------------|-------------|---------------|---------------|---------------|---------------|---------------|---------------|
| Total City | 141.6 | 144.9 | 135.9 | 137.3 | 141.4 | 146.4 | 152.2 | 158.3 |
| General Fund | \$74.20 | \$75.90 | \$71.20 | 71.9 | 74.1 | 76.7 | 79.7 | 82.9 |
| | - | - | - | 1.0% growth | 3.0% growth | 3.5% growth | 4.0% growth | 4.0% growth |

TRANSIENT OCCUPANCY TAX REVENUE FORECAST (\$ in millions)



*FY 2009 unaudited actuals

The current state of economy has had a more negative effect on San Diego tourism and transient occupancy tax revenues in FY 2009. TOT revenues had continually shown positive growth from FY 1996 through FY 2008, with the trend reversing in FY 2009. Total City TOT revenues decreased by \$18.7 million in FY 2009, from \$159.4 million in FY 2008 to \$140.7 million, and General Fund TOT revenues respectively decreased by \$9.5 million, from \$83.7 million to \$74.2 million. The outlook for TOT revenues in FY 2010 is a continued negative growth caused by a decline in consumer discretionary spending. Based on recent FY 2009 TOT receipts and further expected reduction in tourism, projections for TOT revenue in FY 2010 have been revised downward to \$71.2 million from the FY 2010 Adopted Budget figure of \$75.9 million (the total Citywide FY 2010 Adopted Budget figure is \$144.9 million and has been revised downwards to \$135.9 million in this outlook).

According to the most recent tourism report from the San Diego Convention and Visitors Bureau (CONVIS), a 3.5 percent decline in total visitors to San Diego is expected in calendar year 2009, while overnight visits will decline by 4.9 percent. Major factors that closely correlate with TOT revenues are room demand and the average daily room rate (ADR) for hotel rooms in the City. CONVIS currently has forecasted room demand to decline by 7.5 percent, while ADR is projected to decline by 8.8 percent to \$129 from \$141.5 from calendar year 2008 to calendar year 2009. Tourism trends are currently forecasted to reverse in early 2010 from the negative trend in 2009. Compared with calendar year 2009, the total number of visitors to San Diego is expected to increase by 1.4 percent with overnight visits increasing by the same amount in calendar year 2010, while room demand and the ADR are expected to increase by 2.8 percent and 0.8 percent, respectively. The forecasted growth for FY 2011 based on this estimation is 1 percent, and continued growth in each fiscal year thereafter. TOT revenue is forecasted to improve annually after FY 2011 and to gradually return to historical growth rates. The growth rate is estimated to increase to 3 percent in FY 2012, 3.5 percent in FY 2013, and 4 percent in FY 2014-2015.

TRANSIENT OCCUPANCY TAX SENSITIVITY ANALYSIS

| SCENARIO | \$ Revenue in Millions | FORECAST 2010 | FORECAST 2011 | FORECAST 2012 | FORECAST 2013 | FORECAST 2014 | FORECAST 2015 |
|-----------------|-------------------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
| LOW | \$ REVENUE | \$68.0 | \$67.3 | \$68.0 | \$69.7 | \$72.1 | \$75.0 |
| | % GROWTH | - | -1.0% | 1.0% | 2.5% | 3.5% | 4.0% |
| OUTLOOK | \$ REVENUE | \$71.2 | \$71.9 | \$74.1 | \$76.7 | \$79.7 | \$82.9 |
| | % GROWTH | - | 1.0% | 3.0% | 3.5% | 4.0% | 4.0% |
| HIGH | \$ REVENUE | \$71.9 | \$73.0 | \$75.9 | \$78.9 | \$82.9 | \$87.0 |
| | % GROWTH | - | 1.5% | 4.0% | 4.0% | 5.0% | 5.0% |

The TOT sensitivity analysis is based on the varying expectations in a rebound in consumer discretionary spending. As the economic slowdown has continued, consumers have been spending significantly less on travel and tourism-related activities, which has translated into a steep decline in TOT revenue to the City. The TOT forecast built into the FY 2011-2015 Outlook is based on the assumption that tourism and business travel will begin to increase as consumer

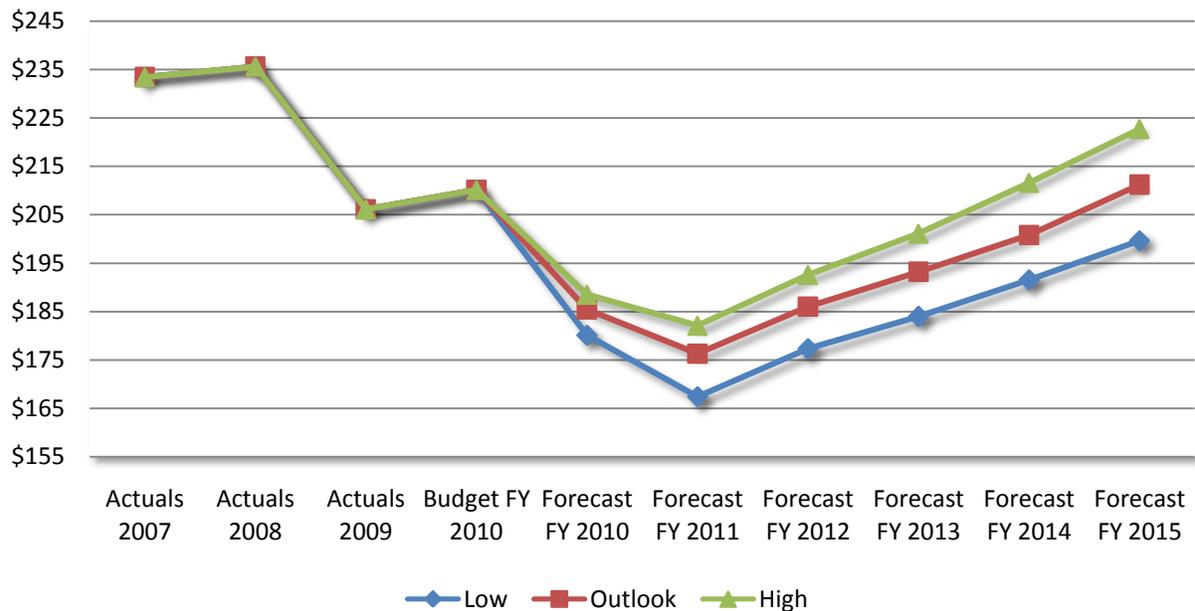
spending is forecasted to increase in late FY 2010. The low scenario for TOT revenue is based on a continued decline in consumer discretionary spending through FY 2010 and the first half of FY 2011, which will have a continued impact on spending for travel and tourism-related activities. The forecasted recovery beyond FY 2011 in the low scenario is based on the assumption that discretionary spending on travel and tourism will slowly recover as consumers continue to spend conservatively. Additionally, the low scenario is based on business spending on travel and conference attendance growing at a reduced pace as businesses continue to spend less. The high scenario is based on the assumption of improved recovery in consumer spending beyond what is forecasted in the Outlook, with improvement coming in mid-FY 2010. The high scenario also forecasts a return to long-run growth rates in TOT in FY 2012 as compared to the projection in the Outlook where a recovery in consumer spending and economic growth is expected in late FY 2011.

Sales Tax

(\$ in millions)

| UNAUDITED ACTUALS 2009 | BUDGET 2010 | FORECAST 2010 | FORECAST 2011 | FORECAST 2012 | FORECAST 2013 | FORECAST 2014 | FORECAST 2015 |
|------------------------|-------------|---------------|---------------|---------------|---------------|---------------|---------------|
| \$206.2 | \$210.1 | \$185.4 | \$176.3 | \$186.0 | \$193.2 | \$200.8 | \$211.2 |
| | | | -4.9% growth | 5.5% growth | 3.9% growth | 3.9% growth | 5.2% growth |

SALES TAX REVENUE FORECAST (\$ in millions)



*FY 2009 unaudited actuals

The downward trend in taxable sales has continued each quarter for the past twelve months and is forecasted to continue to show negative growth through the second quarter of FY 2011, flat

growth in the third quarter of FY 2011, and then recovering slowly over the next four quarters to long-run growth rates. The continued negative trend was expected to stabilize in the final quarter of FY 2009, but the decline has continued into the first quarter of FY 2010, exceeding a 19 percent decline as compared to prior fiscal year quarter. Based on this continued trend of large declines in consumer spending, mixed economic indicators that are not providing any sign of recovery in spending, and continual gains in the number of unemployed in the State and San Diego County, the sales tax budget was revised downwards in the Outlook in the FY 2010 base by \$24.8 million. This updated projection is a 10 percent decline from FY 2009 unaudited actual receipts.

Economists forecast that taxable sales will begin to grow around mid-FY 2011, as compared to the previous fiscal year comparable quarter, and will continue to recover thereafter to a sustainable long-run growth rate. Taxable sales (not City’s sales tax revenue) are forecasted to continue to grow approximately 3 percent annually, according to a long-term forecast prepared by the State Board of Equalization. These growth rates do not directly correspond to the sales tax growth rates shown in the forecast.

The forecasted revenue amount in FY 2011 shown in the above table is forecasted to be below the prior fiscal year’s revenue amount even though an increase is projected in taxable sales. This is due to the lag effect in the triple-flip portion of sales tax revenue (the triple-flip is a property tax backfill previously established to compensate jurisdictions for a reduction in sales tax revenues that were diverted to the State to pay for educational programs). The triple-flip portion of sales tax revenue is collected in the preceding fiscal year (based on performance of taxable sales in the fiscal year when collected) and paid in the current fiscal year which causes different growth rates in the Bradley-Burns sales tax receipts and triple-flip receipts as shown in the table above. The FY 2011 forecast for sales tax reflects a decline of \$57.1 million or 24.5 percent from FY 2007 actual sales tax receipts of \$233.4 million.

SALES TAX SENSITIVITY ANALYSIS

| SCENARIO | \$ Revenue in Millions | FORECAST 2010 | FORECAST 2011 | FORECAST 2012 | FORECAST 2013 | FORECAST 2014 | FORECAST 2015 |
|----------|------------------------|---------------|---------------|---------------|---------------|---------------|---------------|
| LOW | \$ REVENUE | \$180.1 | \$167.4 | \$177.3 | \$184.0 | \$191.5 | \$199.6 |
| | % GROWTH | - | -7.1% | 5.9% | 3.8% | 4.1% | 4.2% |
| OUTLOOK | \$ REVENUE | \$185.4 | \$176.3 | \$186.0 | \$193.2 | \$200.8 | \$211.2 |
| | % GROWTH | - | -4.9% | 5.5% | 3.9% | 3.9% | 5.2% |
| HIGH | \$ REVENUE | \$188.5 | \$182.1 | \$192.6 | \$201.1 | \$211.6 | \$222.7 |
| | % GROWTH | - | -3.4% | 5.7% | 4.4% | 5.2% | 5.2% |

The sales tax revenue sensitivity analysis is based on the timing of the recovery in consumer spending on discretionary items. The growth in consumer confidence, employment figures, average per capita personal income, and savings rates, in addition to other factors, determine when a rebound in consumer spending may occur. Economists forecast that the stabilization in these drivers will occur in late FY 2010; however, an extended decline in consumer spending has persisted and has consistently exceeded forecasted estimates. The low scenario is based on a

delayed recovery in these indicators that occurs in mid-FY 2011 and an extended period of recovery prior to reaching long-term growth rates in revenue. The high scenario assumes that the economic indicators mentioned above will rebound in early FY 2011. The recovery of sales tax revenue growth in a higher scenario to future growth levels is slightly higher than the outlook scenario, creating greater revenue over the five-year forecast period.

Safety Sales Tax

| UNAUDITED ACTUALS 2009 | BUDGET 2010 | FORECAST 2010 | FORECAST 2011 | FORECAST 2012 | FORECAST 2013 | FORECAST 2014 | FORECAST 2015 |
|------------------------|-------------|---------------|---------------|---------------|---------------|---------------|---------------|
| \$6.90 | \$7.10 | \$6.20 | \$6.40 | \$6.70 | \$6.90 | \$7.30 | \$7.60 |
| - | - | - | 3.0% growth | 4.0% growth | 4.0% growth | 5.0% growth | 5.0% growth |

(\$ in millions)

Forecasted safety sales tax amounts are based on the same factors as previously discussed for sales tax. The adjusted forecast in FY 2010 is also due to the unexpected large decline in taxable sales in the fourth quarter of FY 2009. The growth rates in safety sales tax mirror the Bradley-Burns sales tax growth rates in FY 2011–2014.

Revenue from Money & Property

(\$ in millions)

| UNAUDITED ACTUALS 2009 | BUDGET 2010 | FORECAST 2011 | FORECAST 2012 | FORECAST 2013 | FORECAST 2014 | FORECAST 2015 |
|------------------------|-------------|---------------|---------------|---------------|---------------|---------------|
| \$ 118.4 | \$ 123.8 | \$ 122.8 | \$ 126.2 | \$ 129.7 | \$ 133.8 | \$ 138.7 |
| - | - | -0.8% growth | 2.7% growth | 2.7% growth | 3.2% growth | 3.7% growth |

Revenue from money and property includes: franchise fees from San Diego Gas and Electric (SDG&E), and cable television providers for the use of the City’s rights-of-way; franchise fee revenue from refuse haulers based on the total amount of refuse hauled annually, interest earnings, and rents and concessions from miscellaneous City-owned properties. The FY 2010 budget for revenue from the money and property revenue category is \$123.8 million, which is comprised of \$73.7 million in franchise fees. Revenue from SDG&E and cable television (which make up 81.7 percent of budgeted franchise fees) are projected to grow annually at 3.0 and 2.5 percent, respectively, between FY 2011-2015. The remaining franchise fees are anticipated to grow annually at a rate of 3 percent during the same time frame. These growth rates are conservative estimates based on historical growth rates and expected increases in operating revenues from franchise fee companies.

Revenues from rents and concessions are budgeted at \$46 million in FY 2010; including \$28.1 million from Mission Bay rents, which are projected to grow at 1.4 percent in FY 2011-2015.

The remaining rents and concessions are projected to be flat in FY 2011-2015. Additionally, a one-time transfer in revenue of \$1.7 million from the Concourse and Parking Garages Fund budgeted in FY 2010 has been removed as an ongoing source of revenue in the Five-Year Financial Outlook. Also included in this category are interest earnings on General Fund revenues, which have been reduced to reflect the updated General Fund reduced total revenue based on current major and departmental revenues for all five fiscal years.

Licenses & Permits

(\$ in millions)

| BUDGET 2010 | FORECAST 2011 | FORECAST 2012 | FORECAST 2013 | FORECAST 2014 | FORECAST 2015 |
|-------------|---------------|---------------|---------------|---------------|---------------|
| \$32.4 | \$29.3 | \$29.7 | \$30.2 | \$30.6 | \$31.0 |
| - | -9.4% growth | 1.4% growth | 1.4% growth | 1.4% growth | 1.4% growth |

The licenses and permits category is comprised of three main components: 1) business license taxes, 2) parking meter revenue, and 3) other permits, such as alarm and occupational licenses. The growth rate projected for license and permit revenue is 1.5 percent annually, which is based on historical results and conservative growth projections over the budgeted amount for FY 2010. The City stopped the collection of the rental unit business tax processing fee. The FY 2010 Annual Budget included \$1.3 million for rental tax processing fees. This amount was removed from the FY 2010 base in the Outlook and is not included in the FY 2011-2015 forecast, resulting in a 9.4 percent decline in revenue from FY 2010 to FY 2011. The City Council directed the repayment of the processing fee paid in the prior year.

Business tax processing fees are charged to recover the costs incurred by the business tax program for collecting regulatory data. This fee has been recently suspended while the City conducts a cost recovery analysis to determine an appropriate fee to support regulatory activities. The FY 2010 Annual Budget included \$2.1 million for business tax processing fees. This amount was removed from the FY 2010 base in the Outlook and is not included in the FY 2011-2015 forecast. A new fee would require City Council approval and, therefore, is not included in the revenue forecast.

Fines, Forfeitures, and Penalties

(\$ in millions)

| BUDGET 2010 | FORECAST 2011 | FORECAST 2012 | FORECAST 2013 | FORECAST 2014 | FORECAST 2015 |
|-------------|---------------|---------------|---------------|---------------|---------------|
| \$32.3 | \$33.0 | \$33.7 | \$34.4 | \$35.2 | \$36.0 |
| - | 2.1% growth | 2.2% growth | 2.2% growth | 2.2% growth | 2.2% growth |

Fines, forfeitures, and penalties include parking citations, traffic school fees, impound fees, and other vehicle related citations. A 2.1 annual percent growth rate is applied to this category based on estimated growth in citation revenue.

Revenues from Other Agencies

(\$ in millions)

| BUDGET 2010 | FORECAST 2011 | FORECAST 2012 | FORECAST 2013 | FORECAST 2014 | FORECAST 2015 |
|----------------|------------------|------------------|------------------|------------------|------------------|
| \$12.4 | \$12.2 | \$12.3 | \$12.4 | \$12.5 | \$12.7 |
| - | -1.1% growth | 0.7% growth | 0.7% growth | 1.0% growth | 1.1% growth |

The revenues from other agencies category include federal and State grants and motor vehicle license fees (MVLFF). No growth is assumed for State and federal grants, and allocations are currently budgeted at flat growth for the forecasted period. In addition, the City is expected to receive funding from the federal stimulus package which includes such areas as: general infrastructure, transportation, water, housing, public safety, and energy. However, no funding from the federal stimulus package will support the General Fund operating budget.

MVLFF is currently budgeted at \$3.9 million in FY 2010, with 2 percent growth in revenue in FY 2011–2013 and increases to 3 percent growth in FY 2014–2015. Moderate growth in MVLFF is currently forecasted due to uncertainty in the correlation between an economic recovery and new vehicle purchases. As the economy recovers, governmental incentives in addition to incentives from manufacturers will be reduced and consumers may choose to spend discretionary income on other purchases other than new vehicles. Additionally, the level of impact on revenue from the “cash-for-clunkers” program and other initiatives taken by vehicle manufacturing companies are currently not known.

Charges for Current Services

(\$ in millions)

| BUDGET 2010 | FORECAST 2011 | FORECAST 2012 | FORECAST 2013 | FORECAST 2014 | FORECAST 2015 |
|----------------|------------------|------------------|------------------|------------------|------------------|
| \$138.6 | \$132.7 | \$135.2 | \$137.7 | \$140.3 | \$142.9 |
| - | -4.3% growth | 1.9% growth | 1.9% growth | 1.9% growth | 1.9% growth |

The revenue forecasted in charges for current services is comprised of charges for services provided to the public and other City funds. The major components in this category in FY 2010 budget are Engineering Department’s services to other City funds totaling \$30.8 million and general government services totaling \$35.6 million. See **Attachment IV** for the FY 2010 Adopted Budget breakout of this category.

The decline in this revenue category from FY 2010 to FY 2011 is due to the elimination of \$8.3 million in one-time revenues in the Outlook forecast (see **Attachment II** for breakout). The annual growth rate for revenue in this category is 1.9 percent based on expected levels of service provided to other departments and historical growth in reimbursement amounts.

Transfers from Other Funds

(\$ in millions)

| BUDGET 2010 | FORECAST 2011 | FORECAST 2012 | FORECAST 2013 | FORECAST 2014 | FORECAST 2015 |
|----------------|------------------|------------------|------------------|---------------------------|---------------------------|
| \$108.5 | \$78.0 | \$82.8 | \$84.6 | \$79.8 | \$79.1 |
| - | -28.1% growth | 6.2% growth | 2.1% growth | -5.6% growth ¹ | -0.9% growth ² |

1- Due to the elimination of \$11.3 million CCDC payment for PETCO Park debt service, reducing the TOT transfer to the General Fund

2- Due to the elimination of \$4.5 million Unified Port District payment for Convention Center debt service, reducing the TOT transfer to the General Fund

Transfers from other funds includes the one cent transfer from the Transient Occupancy Tax Fund (which is directed by the City Council's discretion), TransNet and Gas Tax revenues, securitized tobacco revenues, and other miscellaneous revenue sources. The forecast for FY 2011 excludes \$25.7 million in one-time revenues that have been eliminated from the forecast (see **Attachment II** for breakout). The growth rate for this category varies from the prior fiscal year based on changes in the amount of transferred revenue from the Transient Occupancy Tax Fund.

The total amount of transient occupancy tax revenue transfer is based on the growth in total TOT funds as previously discussed. However, beginning in FY 2014, the agreement with the CCDC for PETCO Park debt will expire and \$11.3 million in City TOT revenue will be required to pay this portion of debt service and will be unavailable to the City during FY 2014 and FY 2015. Additionally, in FY 2015, the Unified Port of San Diego ceases payments on outstanding Convention Center debt and as a result of paying this obligation out of the TOT fund, the \$4.5 million payment reduces the TOT transfer amount to the General Fund.

GENERAL FUND EXPENDITURES

General Fund expenditures are comprised of personnel and non-personnel expenses, including funding for the City's eight significant areas.

The Outlook continues funding for the Eight Significant Areas as the City of San Diego remains committed to restoring fiscal stability, addressing its financial obligations, and meeting its responsibility to provide essential core services to San Diego residents. The following section describes each of the Eight Significant Areas and funding for each priority.

General Fund Reserves

The General Fund Reserves are comprised of emergency, appropriated, and unappropriated reserves. The City Reserve Policy requires that the General Fund reserves equal 8 percent of General Fund revenues by FY 2012. Contributions to the reserves are forecast to meet Policy requirements to maintain adequate reserves during emergencies. The 2011-2015 Outlook assumes a contribution of \$4.2 million in FY 2011 to reach the required target rate of 7.5 percent. The following table contains contributions forecasted to meet the General Fund Reserve policy goal of 8 percent.

| General Fund Reserve | FORECAST 2011 | FORECAST 2012 | FORECAST 2013 | FORECAST 2014 | FORECAST 2015 |
|--|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Operating Revenue (\$ millions) | \$1,062 | \$1,094 | \$1,125 | \$1,157 | \$1,197 |
| Reserve Policy Target | 7.5% | 8.0% | 8.0% | 8.0% | 8.0% |
| Contribution to Reserves (\$ millions) | \$4.2 | \$7.9 | \$2.5 | \$2.5 | \$3.2 |
| Reserve Balance (\$ millions) | \$79.6 | \$87.5 | \$90.0 | \$92.5 | \$95.7 |

Workers' Compensation Fund Reserve

The City works to build sufficient reserves to pay accrued and forecasted liabilities, based on annual valuation reports prepared by an independent actuary. The City's workers' compensation liabilities are estimated annually based on changes in claims experience and updated actuarial information. The City's total outstanding liability changes annually, based on new claims and short-term liabilities. Based on the latest estimate, as of June 30, 2009, there is a \$148.2 million worker's compensation liability in filed claims Citywide, of which \$118 million is attributable to the General Fund.

According to the City's Reserve Policy, dedicated reserves equal to 50 percent of the value of outstanding claims shall be maintained no later than FY 2014 in order to properly fund current and future liabilities. The following table contains the total annual reserve contribution forecasted in the FY 2011-2015 Outlook to meet the Workers' Compensation Reserve Policy goal.

| Workers' Compensation | BUDGET 2010 | FORECAST 2011 | FORECAST 2012 | FORECAST 2013 | FORECAST 2014 | FORECAST 2015 |
|--|------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Workers' Comp Reserve Policy Target | 22% | 30% | 35% | 42% | 50% | 50% |
| Contributions-- Total City (\$ millions) | \$5.0 | \$10.2 | \$7.4 | \$10.4 | \$11.9 | |
| Contributions-- GF only (\$ millions) | \$4.0 | \$8.1 | \$5.9 | \$8.3 | \$9.4 | - |

Public Liability Fund Reserve

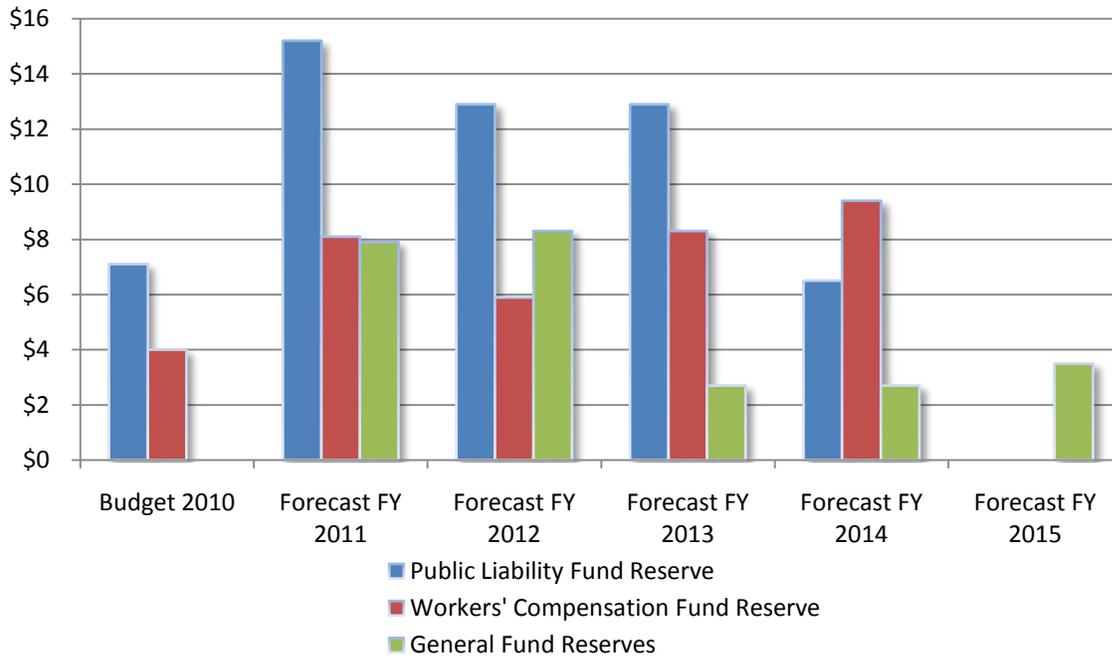
The City continues to build sufficient reserves to pay outstanding and forecasted obligations, similar to the Workers' Compensation Fund Reserve. The latest draft valuation prepared as of June 30, 2009, indicated that the total public liability that the City's General Fund faces is currently \$129.4 million.

The City's Reserve Policy calls for 50 percent of outstanding claims to be placed in reserves for General Fund liabilities no later than FY 2014. The following table contains the reserve goals and annual contributions forecasted in the FY 2011-2015 Outlook. The contributions forecasted for FY 2011-2015 needed to meet the reserve target are as follows:

| Public Liability | BUDGET 2010 | FORECAST 2011 | FORECAST 2012 | FORECAST 2013 | FORECAST 2014 | FORECAST 2015 |
|--|------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Public Liability Reserve Policy Target | 15% | 25% | 35% | 45% | 50% | 50% |
| Contributions-- GF only (\$ millions) | \$7.1 | \$15.2 | \$12.9 | \$12.9 | \$6.5 | - |

The following chart summarizes the contributions from the above-mentioned reserves.

FORECASTED RESERVE CONTRIBUTIONS
(\$ in millions)



Deferred Maintenance

Deferred maintenance and related capital improvements include needed repairs to City facilities as well as repairs and improvements to streets, sidewalks, and storm drains. In FY 2009, the City issued \$103 million in bonds for deferred maintenance. It is estimated that the City’s total deferred maintenance needs may be \$800 to \$900 million, not including Water and Wastewater projects.

Proposition 1B, approved by California voters in November 2006, allocates funding to local governments for projects that improve local roads and highways. Proposition 42, approved by voters in 2002, dedicates a portion of the sales tax on gasoline to also fund transportation projects. The City did not budget any Proposition 1B funding in FY 2010 due to a change in the program that changed allocation of funds to local jurisdictions. Based on the latest available information from the State, the City may receive a disbursement of \$19.6 million from the State in future fiscal years, which would be used to complete new street projects that are not currently included in future fiscal year expense amounts. It is unknown when this disbursement would occur from the State due to their current fiscal shortfall.

The City expects to refund current outstanding deferred maintenance bonds in FY 2010 and issue new deferred maintenance bonds in FY 2011 and FY 2013, dependant on completing existing projects on current schedules, and the full and timely utilization of capital on new projects. Debt service payments are forecasted for FY 2012-2015 as follows:

| Estimated Annual Debt Service (\$million) | | | | | | |
|---|--------------|--------------|---------------|---------------|---------------|---------------|
| Deferred Maintenance Bond Issuances | FY 2010 | FY 2011 | FY 2012 | FY 2013 | FY 2014 | FY 2015 |
| 2009A Bonds (Private Placement) | \$ 4.9 | | | | | |
| Proposed Issuances | | | | | | |
| 2010 Refunding Bonds | | \$ 9.5 | \$ 9.5 | \$ 9.5 | \$ 9.5 | \$ 9.5 |
| 2011 Bonds | | | \$ 9.2 | \$ 9.2 | \$ 9.2 | \$ 9.2 |
| 2013 Bonds | | | | | \$ 9.2 | \$ 9.2 |
| Total | \$4.9 | \$9.5 | \$18.7 | \$18.7 | \$27.9 | \$27.9 |

The amount budgeted in FY 2010 is \$4.9 million for existing bonds that will be refunded with the first issuance of bonds listed above. The amount budgeted in each fiscal year of the Outlook is the incremental portion of debt service over this \$4.9 million budgeted amount.

Storm Water Runoff Compliance

Compliance with federal and State of California storm water regulations imposes an expenditure obligation on the City. In FY 2010, \$37.7 million was budgeted for the Storm Water Department.

The Storm Water Department believes it will be able to maintain compliance with the existing municipal permit based on current funding levels. The permit is due to expire in 2012, and a new permit with potentially more regulations will be issued by the Regional Water Quality Control Board (RWQCB) in January 2013. The RWQCB has recently released a list of new mandates that will affect the City. These new mandates may potentially add significant costs for compliance, and alternatives are currently being reviewed for cost-effective ways to stay within these limits.

The actual needs and funding requirements for storm water compliance are currently under review, and if these do not align with the level of funding currently budgeted, a potential budget adjustment may take place and the Outlook will be updated accordingly.

American with Disabilities Act Compliance

The Americans with Disabilities Act (ADA) requires that the facilities and infrastructure of all public and private agencies be universally accessible. Capital improvement projects supported by the ADA budget are funded through a portion of proceeds from the sale of City-owned real estate assets. Per the City Charter requirement, the proceeds from real estate sales cannot be used to support General Fund operations, but should be deposited in the Capital Outlay Fund and are restricted for capital projects. To date, the City has sold assets totaling nearly \$34 million. The City has been allocating \$10 million per fiscal year for ADA projects with the proceeds from real estate asset sales beginning in FY 2008. For FY 2008 projects, \$5.1 million has been expended of the \$13.8 million in projects (combined \$10 million in land sales and \$3.8 million in CDBG projects), while \$1.8 million of \$11.3 million (CDBG \$1.3 million and \$10 million in land sales) in projects for FY 2009 has been expended. In FY 2010, the ADA budget is \$10.0 million. As the target for the sale of City-owned properties remains \$10.0 million through FY 2015, the 2011-2015 Outlook assumes that allocations for ADA projects will be \$10.0 million for FY 2011-2015.

Pension Plan

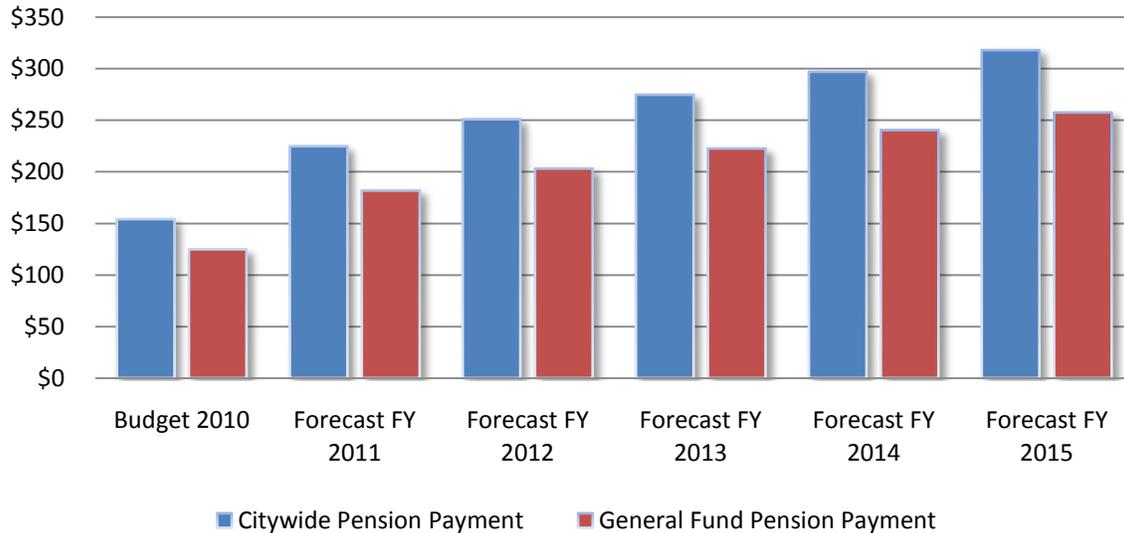
A new pension plan was negotiated by the Mayor and the impacted labor organizations, and was approved by the City Council in FY 2009. This new plan will lower the City’s pension related risk and expenses in future years. In addition, the City modified the retirement factor for sworn police personnel hired after July 1, 2009 to 3 percent at age 55 from 3 percent at age 50. The City’s savings from the new pension plan will be reflected in the actuarial valuation to determine future ARC payments. The City’s FY 2010 ARC payment is \$154.2 million, with the General Fund portion of \$125.3 million as determined by the San Diego City Employees’ Retirement System (SDCERS) actuary. On September 18th, 2009, SDCERS’ actuary, Cheiron, released projected ARC payments for future fiscal years based on actuarial methodologies determined by the SDCERS’ Board.

The forecasted ARC payments for FY 2011-2015, shown in the table below, do not take into account the following changes that took effect on July 1, 2009: 1) the reduced DROP interest rate for retirees; 2) lower budgeted salaries for FY 2010 based on negotiated savings with individual bargaining units; and 3) savings from the new pension plan for new hires. One of the variables in the forecasted ARC is the assumption that annual pay increases by 4.25 percent. For FY 2010, salary increases have been frozen for all City employees. The forecasted ARC for FY 2011 shown in the table below may be lower by approximately \$12 million Citywide (\$9.7 million for the General Fund) since the assumption used in the forecast provided by Cheiron does not reflect the salary freeze for FY 2010. A new valuation to be used for the development of the FY 2011 budget is expected at the end of calendar year 2009.

The FY 2010 budget and FY 2011-2015 forecasts for the City’s ARC payments are presented in the following table.

| ARC (\$ millions) | BUDGET 2010 | FORECAST 2011 | FORECAST 2012 | FORECAST 2013 | FORECAST 2014 | FORECAST 2015 |
|--------------------------|------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Citywide ARC Payment | \$154.2 | \$224.8 | \$250.9 | \$274.9 | \$297.1 | \$318.1 |
| General Fund ARC Portion | \$125.3 | \$182.0 | \$203.1 | \$222.6 | \$240.5 | \$257.5 |

RETIREMENT ARC CONTRIBUTIONS
(in millions)



Other Post-Employment Benefits

Other Post-Employment Benefits (OPEB) represent the cost for retiree healthcare. The City has been prefunding future liabilities for the past two years in addition to funding the pay-as-you-go portion that provides for annual healthcare coverage for City retirees. As of the June 30, 2009 actuarial valuation, the FY 2011 OPEB ARC is \$120.3 million for the City’s post-retirement medical benefit program. The valuation assumed a 6.69 percent discount rate and a total actuarial accrued liability of \$1.3 billion. The Outlook assumes that the City will continue to fund the current year post-employment healthcare obligation (pay-as-you-go) assuming an average growth of 12.6 percent for FY 2011-2015. Additionally, the Outlook assumes that the City will contribute \$25.0 million annually to the CalPERS Employer Retiree Benefit Trust to pre-fund future liabilities. Although, not legally required, if the City was to fully fund the OPEB ARC in FY 2011, an additional contribution of \$58.2 million Citywide (\$40.4 million General Fund) will be needed.

| OPEB (\$ millions) | BUDGET 2010 | FORECAST 2011 | FORECAST 2012 | FORECAST 2013 | FORECAST 2014 | FORECAST 2015 |
|---------------------------|-------------|---------------|---------------|---------------|---------------|---------------|
| Citywide OPEB | \$57.1 | \$62.2 | \$67.3 | \$72.5 | \$77.9 | \$83.2 |
| General Fund OPEB Portion | \$39.7 | \$43.2 | \$46.8 | \$50.4 | \$54.2 | \$57.8 |

Salaries and Wages

Between FY 2011 and FY 2015, there is no projected growth in salaries and wages. In FY 2011 salaries and wages are funded at the FY 2010 budgeted level of \$516.1 million. If salaries should increase by 1 percent, an estimated \$5.2 million increase in annual salary and fringe costs will result in the General Fund.

Fringe Benefits

Fringe expenditures consist of fixed and variable costs to provide employee benefits. These include: retirement, other post-employment retiree health care benefits, flexible benefits, workers' compensation, long-term disability, supplemental pension savings plan, employee offset savings, Medicare, risk management administration, unemployment insurance, and unused sick leave. Of these expenditures, retirement is the most significant component of the total fringe cost.

Excluding retirement, workers' compensation, and the post-employment healthcare obligation (pay-as-you-go), the remaining fringe expenditures are expected to remain flat from FY 2011-2015.

Vacancies

During the course of a year, departments accumulate savings in personnel expenditures through under-filled, newly-filled, and vacant positions. Vacant positions may arise from attrition, leaves of absence, and other factors. In FY 2010, the budgeted vacancy savings is \$36.0 million, based on a 3.5 percent vacancy factor. The vacancy savings factor used in the model for the five year forecast period is based on the assumption that there will be more stability in staffing levels in later years.

| Vacancy Factor | BUDGET 2010 | FORECAST 2011 | FORECAST 2012 | FORECAST 2013 | FORECAST 2014 | FORECAST 2015 |
|------------------------------|------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Vacancy Factor (\$ millions) | \$36.0 | \$38.3 | \$31.3 | \$26.5 | \$27.1 | \$27.5 |
| Vacancy Factor Rate (%) | 3.5 | 4.4 | 3.5 | 2.9 | 2.9 | 2.9 |

The current FY 2011 vacancy factor of 4.4 percent for the entire General Fund is based on the expectation that the current hiring freeze can increase savings over the FY 2010 budgeted amount. The vacancy factor then decreases in FY 2012 as this hiring freeze realizes cost savings and reduces the ability to keep open positions vacant without affecting service levels. Finally, in the last three fiscal years the vacancy factor rate decreases to 2.9 percent.

Retirement Offset Contribution and Employee Offset Payment

The employee offset payment and retirement offset contribution paid by the City on an annual basis were negotiated between the City and its labor groups. The Retirement Offset amount paid by the City for retirement contributions was reduced through labor negotiations to achieve savings to balance the projected revenue shortfall in FY 2010. The amounts budgeted in FY 2010 reflect these negotiated savings, and carry through the five-year forecast period. Additionally, these contributions are calculated as a percent of salaries and wages, and consequently do not increase during the forecast period due to the assumed 0 percent growth in salaries.

| (\$ millions) | BUDGET 2010 | FORECAST 2011 | FORECAST 2012 | FORECAST 2013 | FORECAST 2014 | FORECAST 2015 |
|--------------------------------|------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Retirement Offset Contribution | \$5.2 | \$5.2 | \$5.2 | \$5.2 | \$5.2 | \$5.2 |
| Employee Offset Payment | \$10.0 | \$10.0 | \$10.0 | \$10.0 | \$10.0 | \$10.0 |

McGuigan Settlement

The City has another retirement funding commitment from a settlement agreement reached in September 2006 between the City of San Diego and William J. McGuigan (also known as the “McGuigan Settlement”). McGuigan filed the class action suit related to underfunding of the pension system in 2005. Under this settlement, the City was obligated to pay \$173.0 million into SDCERS by June 2011 to address previous underfunding, which occurred between 1996 and 2005. Funding contributions through securitization of future tobacco revenues, actual tobacco revenue receipts, and payments in excess of ARC City contributions result in a remaining obligation of \$39.1 million, of which \$31.7 million needs to be paid from the General Fund.

New Pension Plan Savings

In an effort to reduce the long-term liability and cost of the pension system, the City negotiated a new pension plan with the City’s labor organizations. Pension savings are expected from the elimination of incentives and subsidies for early retirement resulting in lower pension plan costs to achieve savings for taxpayers. In addition, the new plan provided for fair and reasonable retirement benefits to recipients at age 65, and the creation of more equitable investment risk-sharing between the City and members of the pension system. The 2011-2015 Outlook forecasts the following General Fund savings from this pension reform: \$1.1 million in FY 2011, \$1.9 million in FY 2012, \$2.6 million in FY 2013, \$3.3 million in FY 2014, and \$4.2 million in FY 2015.

Flexible Benefits

Flexible Benefits is an Internal Revenue Service (IRS) qualified plan designed to allow employees to choose their health benefits. Costs are variable with respect to positions and increase as the number of positions increases. Growth is not expected between FY 2011-2015 under the assumption that growth in positions will be limited. In FY 2010, \$39.0 million was budgeted; the flexible benefits budget is expected to remain at this level through FY 2015.

Accrued Leave Liability

In the past, the City had not completely funded the additional expense of unpaid leave given to employees who end their employment with the City with accrued balances. While a portion of future leave liability expense has been absorbed in departmental budgets, there will be a large number of employees with high leave balances expected to retire over the next several years. The FY 2010 Annual Budget includes \$4.3 million and is based on anticipated retirements from the Deferred Retirement Option Plan (DROP) within the fiscal year and the projected value of the accrued leave balance. The forecast declines to \$2.7 million in FY 2011, increases to \$16.0 million in FY 2014, and declines to \$2.9 million based on the expected number of retirees.

| (\$ millions) | BUDGET 2010 | FORECAST 2011 | FORECAST 2012 | FORECAST 2013 | FORECAST 2014 | FORECAST 2015 |
|-------------------------|----------------|------------------|------------------|------------------|------------------|------------------|
| Accrued Leave Liability | \$4.3 | \$2.7 | \$4.9 | \$6.4 | \$16.0 | \$2.9 |

The figures in the above table represent approximately 800 employees with DROP retirement dates scheduled between FY 2011-2015.

Supplies and Services, Information Technology, Energy and Utilities, Equipment Outlay

All non-personnel expenditures can be classified into the four expenditure categories of supplies and services, information technology, energy and utilities, and equipment outlay. The FY 2010 budget for these categories totals \$344.2 million. Annual growth is based on an estimated inflation rate of 1.5 percent for supplies and services, 0 percent for information technology, 5 percent for energy and utilities, and 0 percent for equipment outlay.

| (\$ millions) | ANNUAL GROWTH | FORECAST 2011 | FORECAST 2012 | FORECAST 2013 | FORECAST 2014 | FORECAST 2015 |
|------------------------|---------------|---------------|---------------|---------------|---------------|---------------|
| Supplies & Services | 1.5% | \$264.4 | \$270.9 | \$275.0 | \$277.6 | \$284.6 |
| Information Technology | 0% | \$36.7 | \$36.7 | \$36.7 | \$36.7 | \$36.7 |
| Energy & Utilities | 5% | \$29.8 | \$31.3 | \$32.8 | \$34.5 | \$36.2 |
| Equipment Outlay | 0% | \$9.9 | \$9.9 | \$9.9 | \$9.9 | \$9.9 |

Information Technology

Starting in FY 2007, the City has been implementing technology improvements to bring its information systems up to current levels and setting standards to reduce overall costs. Over the last four fiscal years, time and cost saving efforts have included implementing standard software tools to centrally manage all PC systems, standardized core software for PC systems, and upgrading to Microsoft Office 2007 to take advantage of its features and integration with other products. By standardizing on a core set of PC software products, in combination with using standard, business-class PC hardware, the ongoing support costs are reduced due to increased efficiency with standardized systems. Additionally in 2009, the City began implementation of its first Enterprise Resource Planning (ERP) system, called OneSD, using the SAP software suite to manage Citywide financial and procurement functions under one software platform. The initial implementation will be completed in FY 2010 with the addition of human resources management, Public Budget Formulation. Over the next two years, the City will continue to implement additional ERP modules to further integrate business processes within OneSD for more efficient operations.

In 2009, the City also began the process of selectively sourcing its Information Technology (IT) services by opening competitive bids, with the goal of maintaining or increasing service performance levels at the same or lower costs. Selected IT services include the Help Desk and Desktop Support, SAP as-needed technical support, Telecommunications, and Data Center. Other services will be evaluated in the future. These bidding efforts and implementation of these services are expected to continue into FY 2012, and account for the projected 0 percent growth in General Fund IT expenses.

New Facilities

Additional costs for new facilities for the Fire-Rescue and Park and Recreation Departments are included in this Outlook as outlined below:

Fire Department

FY 2012 – FY 2015 - \$100,000 per fiscal year for additional Bay Side station operating costs
 FY 2012 – \$367,323 Mission Valley station grant match

Park and Recreation Department:

| | |
|-----------------------|----------------------|
| FY 2011 – \$557,108 | Additional 5.49 FTEs |
| FY 2012 – \$1,255,223 | Additional 8.42 FTEs |
| FY 2013 – \$519,545 | Additional 6.36 FTEs |
| FY 2014 – \$646,144 | Additional 4.84 FTEs |

There are no new police stations scheduled to open within the next five years; therefore, no additional costs for new planned Police Department facilities are included in the Outlook. Construction of a new downtown library is currently under consideration and additional operating cost of the new library (\$2 million annually) will be supported by donation for the first five years of operation.

Convention Center Expansion

The impact of the proposed expansion of the Convention Center to the General Fund has not been included due to the uncertainty associated with development options and other specific details.

Civic Center Development

Feasibility information and various analyses for the development of a new Civic Center are currently being reviewed by the City. The newly constructed Civic Center would consist of a high-rise tower to replace the City Administration Building (CAB), Concourse, City Operations Building (COB), and the Parkade. This newly constructed property would also consolidate all City employees who are in the downtown area, currently in leased space, into one property. For the Five-Year Financial Outlook, economic and financial analyses with three scenarios have been performed to determine the fiscal impact of different development options to the City. Each scenario evaluates the need to complete deficient maintenance items in the City-owned buildings mentioned above. The analysis was based on the financial analysis report prepared by Jones, Lang, LaSalle, a real estate consulting firm; and the facilities condition and engineering report prepared by DMJM, Inc., an engineering firm. The three scenarios that have been analyzed and reviewed by the City for the Five-Year Financial Outlook are discussed below, with the corresponding impact on General Fund expenditures for each scenario at bottom.

Scenario 1 is based on the assumption that the new Civic Center construction will begin in FY 2011 and the newly constructed property would be delivered in FY 2014, with little to no additional costs incurred above currently budgeted items. No capital outlays for deficient maintenance items for City-owned properties are included due to the short time frame in which the new property would be delivered. This scenario is the same as the current “baseline” five-year financial forecast with the same revenue shortfalls. The only additional cost added for this scenario is an estimated \$1.3 million to move employees and equipment from City owned and leased properties into the new Civic Center building.

Scenario 2 is also based on the assumption that the new Civic Center construction will begin in FY 2011 and be delivered in FY 2014. However, this scenario incorporates the funding for the deficient maintenance items outlined in the facility condition report’s short time frame scenario. This includes fire sprinkler installation and spot asbestos treatment in the City Administration Building, in addition to mechanical, plumbing, and ADA compliance outlays in 2011. This

scenario then assumes that the costs for deferred maintenance items outlined in the deficient maintenance items report (Five-year scenario) would be undertaken for the Parkade structure in FY 2011 and COB in FY 2012. (The pro-rata cost incurred to the General Fund in this scenario is based on the General Fund department occupancy in COB). No costs are incurred on the Concourse building in this scenario due to the property’s expected demolition and the construction of the new Civic Center building on the same plot of land for delivery in FY 2014.

Scenario 3 assumes that construction on the new Civic Center building would not begin during the forecasted five-year time frame. This “Hold Steady” scenario assumes that the costs for deficient maintenance items shown in the facility condition report over the long-range scenario would be undertaken for all four City-owned properties. (The costs added to this scenario for maintenance and life/safety items are based on the General Fund’s occupancy percentage for each property: CAB 100 percent, COB 37 percent, Concourse 77 percent, Parkade 100 percent.) These deficient items include sprinkler installation and asbestos spot treatment in CAB in addition to mechanical, plumbing, and electrical repair expenditures in all four properties. It is assumed for this scenario that expenditures for repairs to CAB would occur in FY 2011; the City Operations Building in FY 2012; and the Concourse and Parkade in FY 2013.

This scenario also includes the effect of renewing leases in other City-occupied properties during FY 2013-2014 as compared to their previous rental rates (based on expected market conditions during renewal). This assumes that the City would negotiate an extended lease term for each property currently occupied to be co-terminus with the completion of the new Civic Center building. Discounting by 5 percent, the renewal rates outlined in the letters-of-intent that the Real Estate Assets Department has received from the respective landlords of each occupied property still result in increased rental costs due to the low rental rates that the City currently has in each property. These current low rates are attributable to when the leases were created and the low cost of tenant improvements in each property.

Scenario 4 includes completing only the fire and life safety items described in the prepared facilities condition report. The total cost for asbestos spot removal and the installation of fire sprinklers in the City Administration Building totals \$5.6 million in FY 2011 and no additional costs incurred for other deferred maintenance items or fire/life safety in other City-owned buildings.

The additional cost for each scenario outlined above is as follows:

| ITEM (\$ millions) | FORECAST 2011 | FORECAST 2012 | FORECAST 2013 | FORECAST 2014 | FORECAST 2015 |
|---------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Scenario 1 | - | - | - | \$1 | - |
| Scenario 2 | \$13 | \$1 | - | - | - |
| Scenario 3 “Hold Steady” | \$17 | \$2 | \$13 | - | \$1 |
| Scenario 4 | \$5.6 | - | - | - | - |

The costs for earthquake retrofitting for the City Administration Building, City Operations Building, Concourse Building, and the Parkade have not been considered in any of the scenarios outlined above. If this retrofitting is to be completed, an additional cost of approximately \$50 million would be added to the five-year forecasted time frame.

The costs outlined above may not impact the General Fund if the repairs to City owned building extend the useful life of the property. If the repairs undertaken extend the life of the building, deferred maintenance funds discussed previously in the outlook may be used to complete the repairs. However, if the repairs do not qualify in extending the life of the property, then the expended funds would be taken out of the General Fund to comply with life and safety regulations. Currently, scenario 4 is included in the outlook, and is fully paid for by the General Fund.

Election Costs

The cost for City elections in FY 2011-2015 have also been included in supplies and services to account for additional expenses incurred during these years.

CONCLUSION

This Five-Year Financial Outlook is a comprehensive, long-range analysis of the City's General Fund revenues and expenditures and it serves as a basis for the preparation of the City's annual budget.

This long-term forecast identifies structural challenges facing the City. Given the magnitude of the obligations needed to be addressed to close the projected revenue shortfall, service levels will be affected in FY 2011. To address the scope of the problem presented in this Outlook, a dialogue with elected officials, staff, labor representatives, as well as the public will be needed to formulate the course of action to address the projected deficit and identify potential solutions.

Potential solutions for the revenue shortfall forecasted in FY 2011 are currently being analyzed. There are two options to approach this forecasted shortfall in FY 2011: 1) addressing the shortfall with mid-FY 2010 budget adjustments; or 2) addressing the shortfall with spending cuts that would be enacted as part of the FY 2011 annual budget process.

The first option would be to adopt an 18-month budget that would be implemented in mid-FY 2010. This would require the Council to reopen the fiscal year 2010 budget and make the necessary budget reductions mid-fiscal year. Those savings would be carried forward into FY 2011. This would offset the need for a larger reduction in FY 2011. This 18-month solution would result in expenditure reductions of approximately \$120 million in FY 2010 mid-year or approximately 1,620 Full-Time Equivalent positions (FTEs).

The second option would be to reduce staffing and programs during the normal FY 2011 budget process. This solution would then require more significant cuts in staffing and programs in FY 2011. Approximately an additional \$59 million or 800 FTEs (\$179 Million and 2,420 FTEs in total) with additional associated service reductions would need to be eliminated to achieve a balanced budget in FY 2011.

As solutions are identified to address the City's fiscal challenges, they will be incorporated into subsequent versions of the Financial Outlook.

ATTACHMENT I
CITY OF SAN DIEGO FY 2011 - 2015 FIVE-YEAR FINANCIAL OUTLOOK
PRO-FORMA GENERAL FUND REVENUE & EXPENSES
(in millions)

| General Fund Revenues | FORECAST 2011 | FORECAST 2012 | FORECAST 2013 | FORECAST 2014 | FORECAST 2015 |
|--|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Property Tax (incl. Transfer Tax) | \$ 396.4 | \$ 404.5 | \$ 416.7 | \$ 433.4 | \$ 450.7 |
| Sales Tax (incl. Safety Sales) | 182.7 | 192.7 | 200.2 | 208.1 | 218.8 |
| Transient Occupancy Tax | 71.9 | 74.1 | 76.7 | 79.7 | 82.9 |
| Franchise Fees | 75.0 | 76.7 | 78.5 | 80.3 | 82.2 |
| Motor Vehicle Licensing Fees | 4.0 | 4.1 | 4.1 | 4.3 | 4.4 |
| Licenses and Permits | 29.3 | 29.7 | 30.2 | 30.6 | 31.0 |
| Fines, Forfeitures & Penalties | 33.0 | 33.7 | 34.4 | 35.2 | 36.0 |
| Rents and Concessions | 44.6 | 45.0 | 45.4 | 45.8 | 46.2 |
| Revenue from Other Agencies | 8.3 | 8.3 | 8.3 | 8.3 | 8.3 |
| Charges for Current Services | 132.7 | 135.2 | 137.7 | 140.3 | 142.9 |
| Transfers from Other Funds | 78.9 | 84.2 | 85.9 | 81.6 | 81.2 |
| Interest Earnings | 3.2 | 4.5 | 5.7 | 7.6 | 10.3 |
| Other Revenue | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 |
| TOTAL GENERAL FUND REVENUES | \$ 1,061.6 | \$ 1,094.1 | \$ 1,125.4 | \$ 1,156.8 | \$ 1,196.6 |
| General Fund Expenditures | 2011 | 2012 | 2013 | 2014 | 2015 |
| Salaries & Wages | \$ 547.8 | \$ 547.8 | \$ 547.8 | \$ 547.8 | \$ 547.8 |
| Salary Vacancy Savings Factor | (36.0) | (36.0) | (36.0) | (36.0) | (36.0) |
| Accrued Leave Liability | 4.3 | 4.3 | 4.3 | 4.3 | 4.3 |
| Retirement | 182.0 | 203.1 | 222.6 | 240.5 | 257.5 |
| Retirement Offset | 5.2 | 5.2 | 5.2 | 5.2 | 5.2 |
| Employee Offset Savings | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 |
| OPEB/Retiree Health | 39.7 | 39.7 | 39.7 | 39.7 | 39.7 |
| Fringe (w/o Ret or Flex) | 50.5 | 50.5 | 50.5 | 50.5 | 50.5 |
| Flexible Benefits | 39.0 | 39.0 | 39.0 | 39.0 | 39.0 |
| Supplies & Services | 264.4 | 270.9 | 275.0 | 277.6 | 284.6 |
| Information Technology | 36.7 | 36.7 | 36.7 | 36.7 | 36.7 |
| Energy / Utilities | 29.8 | 31.3 | 32.8 | 34.5 | 36.2 |
| Equipment Outlay | 9.9 | 9.9 | 9.9 | 9.9 | 9.9 |
| TOTAL GENERAL FUND EXPENDITURES | 1,183.5 | 1,212.6 | 1,237.7 | 1,259.9 | 1,285.7 |
| Major Project Expenditures¹ | | | | | |
| OPEB Contribution | 3.5 | 7.1 | 10.7 | 14.5 | 18.1 |
| Deferred Maintenance Debt Service | 4.6 | 13.8 | 13.8 | 23.0 | 23.0 |
| Accrued Leave Liability | (1.6) | 0.6 | 2.0 | 11.7 | (1.4) |
| Vacancy Savings Factor | (2.4) | 4.6 | 9.4 | 8.9 | 8.4 |
| City Hall Fire Sprinkler System | 5.5 | - | - | - | - |
| New Facilities | 0.6 | 1.7 | 0.6 | 0.7 | 0.1 |
| General Fund Reserves | 4.2 | 7.9 | 2.5 | 2.5 | 3.2 |
| TOT Discretionary Above 1 Cent | - | (1.3) | (2.9) | - | - |
| Workers' Compensation Fund | 4.1 | 1.9 | 4.3 | 5.5 | - |
| Public Liability Fund | 8.1 | 5.8 | 5.8 | (0.6) | - |
| New Pension Plan Savings | (1.1) | (1.9) | (2.6) | (3.3) | (4.1) |
| McGuigan Settlement | 31.7 | - | - | - | - |
| TOTAL MAJOR PROJECT EXPENDITURES | 57.2 | 40.3 | 43.7 | 62.9 | 47.4 |
| TOTAL GENERAL FUND EXPENDITURES | \$ 1,240.7 | \$ 1,253.0 | \$ 1,281.4 | \$ 1,322.7 | \$ 1,333.0 |
| GENERAL FUND PROJECTED SHORTFALL | \$ (179.1) | \$ (158.8) | \$ (155.9) | \$ (165.9) | \$ (136.5) |
| ¹ Incremental funding to expenditure baseline | | | | | |

ATTACHMENT II
ONE TIME REVENUE & EXPENSE ADJUSTMENTS FROM FY 2010 BASELINE

| | <u>REVENUE</u> | <u>EXPENSES</u> |
|---|----------------------|---------------------|
| 1) City Treasurer: | | |
| Franchise Tax Board Fee ² | 593,000 | |
| Prepaid Parking | | 50,000 |
| 2) Citywide:¹ | | |
| Fund Balance Relief Elimination ² | 3,961,925 | |
| Citywide Elections | | 2,000,000 |
| Appropriated Reserve | | 1,666,935 |
| 3) Community & Legislative Services² | 75,000 | 75,000 |
| 4) Fire-Rescue: | | |
| Helicopter Fund ² | 1,074,000 | |
| FEMA Reimbursement ² | 490,000 | |
| Flight Simulator Training | | 74,000 |
| Station Alerting System | | 1,600,000 |
| 5) Major General Fund Revenues: | | |
| Parking Garage ³ | 1,695,140 | |
| Rate Stabilization Reserves ⁴ | 17,836,967 | |
| Library Improvement Fund ⁴ | 4,339,833 | |
| TOT Transfer from Trolley Fund ⁴ | 2,847,906 | |
| PC Replacement Funds ⁴ | 705,593 | |
| 6) Park & Recreation : | | |
| Antenna Revenue ² | 816,000 | |
| Fire Pit Maintenance ² | 172,875 | |
| FEMA Brush Management ² | 1,160,315 | |
| New Facility NPE | | 290,000 |
| Re-Budgeting of Balances | | 97,551 |
| 7) Business & Rental Unit Processing Fee⁵ | 3,451,444 | |
| 8) City Planning & Community Investment | | 3,790,174 |
| | <u>\$ 39,219,998</u> | <u>\$ 9,643,660</u> |

1 - GF Portion Only

2 - Eliminated from Charges for Current Services

3 - Eliminated from Rents & Concessions

4 - Eliminated from Transfer from Other Funds

5 - Eliminated from FY 2010 base

ATTACHMENT III
FACILITIES INCLUDED IN FY 2011-2015 FIVE YEAR FINANCIAL OUTLOOK

| FISCAL YEAR 2011 | | | |
|-------------------------|---|-------------|-------------------|
| Department | Facility Name | FTE | Fiscal Impact |
| Park & Recreation | Carmel Valley NP | | |
| Park & Recreation | Del Mar Mesa NP | | |
| Park & Recreation | Carson Elementary School Joint Use Improvements | | |
| Park & Recreation | Sefton Field NP | 1.73 | \$ 239,616 |
| Park & Recreation | West Lewis & Falcon Streets MP | | |
| Park & Recreation | Linda Vista Terrace/Ed Cramer Park | | |
| Park & Recreation | Montgomery Academy Joint Use improvements | | |
| Park & Recreation | Angier Elementary Joint Use Improvements | | |
| Park & Recreation | Encanto CP Concession stand expansion and ADA upgrades/expansion of comfort station | 0.00 | \$ 5,036 |
| Park & Recreation | Angier Joint Use | | |
| Park & Recreation | Carson Joint Use | | |
| Park & Recreation | Carmel Valley NP (# 8) | | |
| Park & Recreation | Del Mar Mesa NP | 1.00 | \$ 138,710 |
| Park & Recreation | Sefton NP | | |
| Park & Recreation | Linda Vista Terrace NP | | |
| Park & Recreation | West Lewis MP | | |
| Park & Recreation | Montgomery Academy Joint Use | | |
| Park & Recreation | Additional Open Space Acreage | 1.00 | \$ 106,484 |
| Park & Recreation | Carmel Valley CP South (Ocean Air) | | |
| Park & Recreation | Carmel Valley CP South Building (Ocean Air) | 1.58 | \$ 234,581 |
| Park & Recreation | NTC/Liberty Station - Phase II | | |
| Park & Recreation | Alice Birney Joint Use | 0.08 | \$ 9,751 |
| Park & Recreation | Roosevelt Joint Use | 0.10 | \$ 10,930 |
| Park & Recreation | Vehicle costs from previous year | 0.00 | \$ (188,000) |
| | | 5.49 | \$ 557,108 |

| FISCAL YEAR 2012 | | | |
|-------------------------|---|-------------|---------------------|
| Department | Facility Name | FTE | Fiscal Impact |
| Park & Recreation | Wegeforth Elementary School Joint Use Improvements | | |
| Park & Recreation | Cabrillo Heights NP Improvements | 0.98 | \$ 43,400 |
| Park & Recreation | West Maple Canyon MP | | |
| Park & Recreation | North Chollas CP, Phase 1C | 0.36 | \$ 29,998 |
| Park & Recreation | Pacific Breezes CP | 2.10 | \$ 243,390 |
| Park & Recreation | Pacific Breezes CP (Ocean View) | | |
| Park & Recreation | Wegeforth Joint Use | | |
| Park & Recreation | Cabrillo Hts NP | 4.00 | \$ 753,961 |
| Park & Recreation | West Maple Canyon MP | | |
| Park & Recreation | Wightman NP | | |
| Park & Recreation | Additional Open Space Acreage | 1.00 | \$ 106,484 |
| Park & Recreation | Angier Elementary School Joint Use Improvements | 0.48 | \$ 43,000 |
| Park & Recreation | Vehicle needed for Pacific Breezes park maintenance | 0.00 | \$ 35,000 |
| Fire & Rescue | Bayside Fire Station Additional Operating Costs | 0.00 | \$ 100,000 |
| Fire & Rescue | Mission Valley Fire Station Grant Match | 0.00 | \$ 367,323 |
| | | 8.92 | \$ 1,722,556 |

ATTACHMENT III (continued)

FACILITIES INCLUDED IN FY 2011-2015 FIVE YEAR FINANCIAL OUTLOOK

| | Facility Name | FTE | Fiscal Impact |
|-------------------|--|-------------|-------------------|
| Park & Recreation | Black Mountain Ranch CP | 1.90 | \$ 439,000 |
| Park & Recreation | Mira Mesa CP Expansion (Carroll NP Development) | | |
| Park & Recreation | Language Academy/Montezuma Elementary School, | 0.10 | \$ 11,818 |
| Park & Recreation | Riviera Del Sol Neighborhood Park (Otay Mesa) | 0.40 | \$ 44,762 |
| Park & Recreation | Hidden Trails NP | 0.56 | \$ 72,804 |
| Park & Recreation | 252 Corridor Park Improvements-Phase II | 0.40 | \$ 43,474 |
| Park & Recreation | Language/Montezuma Joint Use | | |
| Park & Recreation | Mira Mesa Community Park Expansion (Carroll NP Park Development) | 2.00 | \$ 222,203 |
| Park & Recreation | Hidden Trails NP | | |
| Park & Recreation | Riviera Del Sol NP | | |
| Park & Recreation | 252 Corridor Park | | |
| Park & Recreation | Additional Open Space Acreage | 1.00 | \$ 106,484 |
| Park & Recreation | 2 Vehicles needed for park maintenance | 0.00 | \$ 70,000 |
| Park & Recreation | Vehicle needed for Pacific Breezes park maintenance in FY 2012 | 0.00 | \$ (35,000) |
| Park & Recreation | Vehicle costs from previous year | 0.00 | \$ (456,000) |
| Fire & Rescue | Bayside Fire Station Additional Operating Costs | 0.00 | \$ 100,000 |
| | | 6.36 | \$ 619,545 |

| FISCAL YEAR 2014 | | | |
|-------------------------|---|-------------|-------------------|
| | Facility Name | FTE | Fiscal Impact |
| Park & Recreation | McAuliffe Community Park | 0.24 | \$ 13,514 |
| Park & Recreation | Dennerly Ranch NP | 1.60 | \$ 173,256 |
| Park & Recreation | Azalea Neighborhood Park Expansion | 0.00 | \$ 1,575 |
| Park & Recreation | Azalea Recreation Center improvements | 0.00 | \$ 1,375 |
| Park & Recreation | Azalea NP | | |
| Park & Recreation | Dennerly Ranch NP | 2.00 | \$ 368,390 |
| Park & Recreation | McAuliffe CP Expansion | | |
| Park & Recreation | Additional Open Space Acreage | 1.00 | \$ 123,034 |
| Park & Recreation | Vehicle needed for Dennerly Ranch NP | 0.00 | \$ 35,000 |
| Park & Recreation | Vehicles needed in FY 2013 | 0.00 | \$ (70,000) |
| Fire & Rescue | Bayside Fire Station Additional Operating Costs | 0.00 | \$ 100,000 |
| | | 4.84 | \$ 746,144 |

ATTACHMENT IV

| | FY 2010 ADOPTED BUDGET |
|---|---------------------------------------|
| CHARGES FOR CURRENT SERVICES (revenues) | |
| Cemetery Revenue | \$ 877,614 |
| Community Services to Other City Funds | 281,139 |
| Election Fees | 8,600 |
| Emergency Medical Services | 166,500 |
| Engineering Services | 5,777,461 |
| Engineering Services to Other City Funds | 30,827,107 |
| Facilities Maintenance Services to Other City Funds | 3,158,553 |
| Fire Services | 10,123,441 |
| General Government and Financial Services to Other City Funds | 35,591,705 |
| Golf Course Revenue | 236,133 |
| Library Revenue | 1,477,775 |
| Miscellaneous Recreation Revenue | 4,416,782 |
| Miscellaneous Services to Other City Funds | 4,749,500 |
| Other Services ¹ | 24,352,933 |
| Parking Citation Processing | 130,000 |
| Planning and Miscellaneous Filing Fees | 5,300 |
| Police Services | 3,524,307 |
| Real Estate Assets Services to Other City Funds | 890,150 |
| Repair and Damage Recoveries | 235,000 |
| Services to Transient Occupancy Tax Fund | 921,994 |
| Services to Unified Port District | 3,263,000 |
| Street Division Services to Other Funds | 6,356,864 |
| Swimming Pool Revenue | 1,199,087 |
| Total Charges for Current Services | <u>\$ 138,570,945</u> |

¹Includes \$18 million in services provided to Water and Sewer Funds.